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REGISTER

RULES
OF GOVERNMENTAL
AGENCIES



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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 preemptory 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 2009

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
1	December 22, 2008	January 2, 2009
2	December 29, 2008	January 9, 2009
3	January 5, 2009	January 16, 2009
4	January 12, 2009	January 23, 2009
5	January 20, 2009	January 30, 2009
6	January 26, 2009	February 6, 2009
7	February 2, 2009	February 13, 2009
8	February 9, 2009	February 20, 2009
9	February 17, 2009	February 27, 2009
10	February 23, 2009	March 6, 2009
11	March 2, 2009	March 13, 2009
12	March 9, 2009	March 20, 2009
13	March 16, 2009	March 27, 2009
14	March 23, 2009	April 3, 2009
15	March 30, 2009	April 10, 2009
16	April 6, 2009	April 17, 2009
17	April 13, 2009	April 24, 2009
18	April 20, 2009	May 1, 2009
19	April 27, 2009	May 8, 2009
20	May 4, 2009	May 15, 2009
21	May 11, 2009	May 22, 2009
22	May 18, 2009	May 29, 2009

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
23	May 26, 2009	June 5, 2009
24	June 1, 2009	June 12, 2009
25	June 8, 2009	June 19, 2009
26	June 15, 2009	June 26, 2009
27	June 22, 2009	July 6, 2009
28	June 29, 2009	July 10, 2009
29	July 6, 2009	July 17, 2009
30	July 13, 2009	July 24, 2009
31	July 20, 2009	July 31, 2009
32	July 27, 2009	August 7, 2009
33	August 3, 2009	August 14, 2009
34	August 10, 2009	August 21, 2009
35	August 17, 2009	August 28, 2009
36	August 24, 2009	September 4, 2009
37	August 31, 2009	September 11, 2009
38	September 8, 2009	September 18, 2009
39	September 14, 2009	September 25, 2009
40	September 21, 2009	October 2, 2009
41	September 28, 2009	October 9, 2009
42	October 5, 2009	October 16, 2009
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44	October 19, 2009	October 30, 2009
45	October 26, 2009	November 6, 2009
46	November 2, 2009	November 13, 2009
47	November 9, 2009	November 20, 2009
48	November 16, 2009	November 30, 2009
49	November 23, 2009	December 4, 2009
50	November 30, 2009	December 11, 2009
51	December 7, 2009	December 18, 2009
52	December 14, 2009	December 28, 2009

Editor's Note: The Secretary of State Index Department is providing this opportunity to remind you that the next filing period for your Regulatory Agenda will occur from October 13, 2009 to January 4th, 2010 by 4:30 pm, as January 1st is a holiday and the office will be closed.

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Procedural Rules
- 2) Code Citation: 56 Ill. Adm. Code 5300
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
5300.10	Amend
5300.210	Amend
5300.330	Amend
5300.400	Amend
5300.410	Amend
5300.440	Amend
5300.450	Amend
5300.720	Amend
5300.730	Amend
5300.735	Amend
5300.835	Amend
- 4) Statutory Authority: Authorized by Section 5/8-102(E) and Section 5/8-101(C)(3) of the Illinois Human Rights Act [775 ILCS 5/8-102(E) and 775 ILCS 5/8-101(C)(3)]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments to 56 Ill. Adm. Code 5300.10, 5300.210, 5300.330, 5300.400, 5300.410, 5300.440, 5300.450, 5300.735, and 5300.835 correct outdated citations contained in the Human Rights Commission Procedural Rules. The proposed amendments to 56 Ill. Adm. Code 5300.720 and 5300.730 clarify discovery procedures governing administrative adjudications. The proposed amendment to 56 Ill. Adm. Code 5300.10 defines the term “Vice Chair” as the Commissioner authorized to act in the absence of a Chairperson. The proposed amendments also add “or Vice Chair” to instances in the Procedural Rules where the term “Chairperson” is used.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: The proposed amendments do not affect units of local government.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments in writing within 45 days after publication to:
- Harriet Parker
General Counsel
Human Rights Commission
100 W. Randolph St., Ste. 5-100
Chicago, IL 60601
- 312/814-6269 or
312/814-4760 (TDD)
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of Professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2009

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

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER XI: HUMAN RIGHTS COMMISSION

PART 5300
PROCEDURAL RULES

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HUMAN RIGHTS COMMISSION

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- 5300.480 Decision
- 5300.490 Tolling of Time Period (Repealed)
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- 5300.510 General
- 5300.515 Election to Proceed Under the Alternative Hearing Procedure
- 5300.520 Conduct of Hearing
- 5300.530 Powers and Duties of Administrative Law Judge
- 5300.540 Ex Parte Communications
- 5300.550 Form of Pleadings and Other Papers (Repealed)
- 5300.560 Appearances
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- 5300.610 Filing of Complaint
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- 5300.710 Prehearing Memorandum
- 5300.715 Discovery for Alternative Hearing Procedure Matters
- 5300.720 Discovery
- 5300.725 Filing of Disclosure Information and Discovery Material
- 5300.730 Motions and Objections
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- 5300.740 Interlocutory Appeals
- 5300.745 Admission of Fact or of Genuineness of Documents
- 5300.750 Hearing Procedures

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

5300.760	Preparation of Recommended Order and Decision
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5300.765	Petitions for Fees and/or Costs
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5300.786	Extensions of Time (Repealed)
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HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

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5300.1140	Order and Decision
5300.1145	Interest
5300.1150	Rehearing Before Full Commission
5300.1160	Modification of Commission Order
5300.1170	Interlocutory Appeals

AUTHORITY: Authorized by Sections 8-102(E) and 8-101(C)(3) of the Illinois Human Rights Act [775 ILCS 5/8-102(E) and 8-101(C)(3)].

SOURCE: Filed November 15, 1975 by the Fair Employment Practices Commission; emergency amendment at 2 Ill. Reg. 12, p. 11, effective March 24, 1978, for a maximum of 150 days; amended at 3 Ill. Reg. 9, p. 40, effective March 1, 1979; amended at 3 Ill. Reg. 15, p. 100, effective April 9, 1979; transferred to the Human Rights Commission by the Illinois Human Rights Act, effective July 1, 1980; emergency amendment at 4 Ill. Reg. 39, p. 334, effective September 17, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 2709, effective March 2, 1981; amended at 7 Ill. Reg. 9298, effective July 25, 1983; codified at 8 Ill. Reg. 18887; amended at 9 Ill. Reg. 6207, effective April 24, 1985; amended at 16 Ill. Reg. 7838, effective

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

June 1, 1992; emergency amendment at 20 Ill. Reg. 410, effective January 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 7820, effective June 1, 1996; amended at 22 Ill. Reg. 1336, effective January 1, 1998; amended at 33 Ill. Reg. 626, effective January 2, 2009; amended at 34 Ill. Reg. _____, effective _____.

SUBPART A: INTERPRETATIONS

Section 5300.10 Definition of Terms

Where used in this Part, unless the context otherwise clearly requires:

~~The term "Act" means~~ shall mean the Illinois Human Rights Act ~~[775 ILCS 5](Ill. Rev. Stat. 1991, ch. 68, par. 1-101 through 10-103).~~

~~The term "Administrative Law Judge" means~~ shall refer to a hearing officer appointed by the Commission pursuant to Section 8-102(D) of the Act.

~~The term "Aggrieved Party" means~~ shall mean a ~~person~~ Person who is alleged or proven to have been injured by a civil rights violation or believes he or she will be injured by a civil rights violation under Article 3 of the Act that is about to occur. (~~Section 1-103(B)~~Section 1-103 of the Act)

"Chairperson" or "Chair" means the chief presiding officer of the Commission, designated by the Governor.

~~The term "Charge" means~~ shall mean an allegation of a civil rights violation filed with or initiated by the Department in accordance with the ~~provisions of the~~ Act and this Part.

~~The term "Civil Rights Violation" means~~ shall refer to any of the acts or practices constituting civil rights violations under Sections 2-102, 2-103, 2-105(C), 3-102, ~~3-102.13-102.1~~, 3-103, 3-104, ~~3-104.1~~, 3-105, 4-102, 4-103, 5-102, 5A-102 and 6-101 of the Act.

~~The term "Commission" means~~ shall mean the Illinois Human Rights Commission.

~~The term "Commissioner" means~~ shall mean any duly appointed member of the Human Rights Commission, including, unless the context otherwise requires, the

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

Chairperson.

~~The term~~ "Complainant" ~~means~~~~shall mean~~ a person who files a ~~charge~~~~Charge~~ with the Department, including the Department in the case of a ~~charge~~~~Charge~~ initiated by the Department itself.; ~~said~~ ~~The~~ term shall have the same meaning in connection with a ~~complaint~~~~Complaint~~ filed by the Department or by an ~~aggrieved party~~~~Aggrieved Party~~ with the Commission.

~~The term~~ "Complaint" ~~means~~~~shall mean~~ a written ~~complaint~~~~Complaint~~ for hearing filed by the Department or by an ~~aggrieved party~~~~Aggrieved Party~~ with the Commission in accordance with the Act and this Part.

~~The term~~ "Department" ~~means~~~~shall mean~~ the Department of Human Rights.

~~The term~~ "Director" ~~means~~~~shall mean~~ the Director of the Department or a duly authorized designee.

~~The term~~ "Executive Director" ~~means~~~~shall mean~~ the Executive Director of the Commission or a duly authorized designee.

~~The term~~ "Party" ~~means~~~~shall refer to~~ a ~~person~~~~Person~~ designated as ~~complainant~~~~Complainant~~ or ~~respondent~~~~Respondent~~ in a ~~charge~~~~Charge~~ or ~~complaint~~~~Complaint~~.

~~The term~~ "Person" ~~has~~~~shall have~~ the ~~same~~ meaning as prescribed in Section 1-103 of the Act.

~~The term~~ "Respondent" ~~means~~~~shall mean~~ a ~~person~~~~Person~~ against whom a ~~charge~~~~Charge~~ or ~~complaint~~~~Complaint~~ is filed in accordance with the Act and this Part.

"Vice Chair" means the Commissioner, selected by the Commission to serve in that capacity, who is authorized to act in the absence of the Chairperson in order to ensure that vacancies do not impair the right of the remaining members to exercise all the powers of the Commission (Section 8-101(C)(3) of the Act).

(Source: Amended at 34 Ill. Reg. _____, effective _____)

SUBPART B: RECORDS AND WITNESSES

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

Section 5300.210 Subpoenas

- a) Issuance
- 1) Subpoenas shall be issued by a Commissioner to compel the attendance of a witness or the production of books, payrolls, records, correspondence, documents, papers or other evidence under the following circumstances:
 - A) At the instance of the Department to facilitate its investigation of a ~~charge~~Charge; or
 - B) At the instance of a ~~party~~Party to the proceedings, in connection with a hearing convened pursuant to this Part; or
 - C) At the instance of a ~~party~~Party to the proceedings, solely to obtain the production of books, payrolls, records, correspondence, documents, papers or other evidence from non-parties in anticipation of a hearing convened pursuant to this Part. Subpoenas issued in anticipation of a hearing may issue at any time subsequent to the time all ~~respondents~~Respondents have answered the ~~complaint~~Complaint or are required to answer the ~~complaint~~Complaint and not prior to that time, except by agreement of the ~~parties~~Parties or with leave of the Administrative Law Judge. This Section does not confer a right on a ~~party~~Party to take a deposition of any ~~person~~Person.
 - 2) Blank subpoenas may be obtained for use pursuant to this ~~subsection~~Subsection by applying ~~therefor~~ to the Executive Director. The applicant shall specify the ~~charge~~Charge or ~~complaint~~Complaint for which the subpoena is to be used and the type of subpoena requested.
- b) Witness and Mileage Fees – The cost of service and witness and mileage fees shall be borne by the ~~person~~Person requesting the subpoena. Witness and mileage fees shall be the same as are paid witnesses in the circuit courts of the State of Illinois, as set forth in Section 4.3 of the Circuit Courts Act [705 ILCS 35/4.3]~~Section 47 of the Fees and Salaries Act [55 ILCS 45/47]~~.
- c) Service and Contents – The ~~person~~Person requesting a subpoena shall be

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

responsible for its service on the subpoenaed person by personal service, by registered or certified mail or by leaving a copy at the principal office or place of business of a subpoenaed corporation or partnership. A subpoena shall be served reasonably in advance of its return date. The subpoena shall state the name and address of the ~~person~~Person initiating its issuance, and shall identify the ~~person~~Person, or evidence subpoenaed and the ~~person~~Person to whom, ~~and the~~ place at which, ~~and the~~ date and time when it is returnable. The ~~person~~Person requesting the subpoena shall also serve a copy of the subpoena upon all ~~parties~~Parties of record. Service of the copy of the subpoena on the ~~parties~~Parties may be by first-class mail.

- d) Petition to Quash or Modify – Within ~~5~~five days after service of a subpoena on any ~~person~~Person and service of copies of the subpoena on the ~~parties~~Parties, ~~the persons~~such Person or any ~~party~~Party may file a petition to quash or modify ~~the~~sa~~id~~ subpoena, stating reasons in support of ~~the~~sue~~ch~~ relief. ~~The~~Sue~~ch~~ a petition shall be filed with the Commission in the case of a subpoena issued during the Department's investigation of any matter, and with the Administrative Law Judge in the case of a subpoena issued in connection with, or in anticipation of, a hearing before the Judge. A copy of the petition shall be served at the same time on the ~~person~~Person serving the subpoena. Within ~~5~~five days after service of ~~the~~sue~~ch~~ petition, or within any longer period that the Commission or a ~~3~~three-member panel or the Administrative Law Judge may order, the serving ~~party~~Party may file an answering statement ~~to the petition~~thereto. A hearing may be held in such a dispute ~~at~~in the discretion of the Commission or Administrative Law Judge. When ~~sue~~ch a petition is properly filed with the Commission, the Commission may refer the question to an Administrative Law Judge for hearing, but the final decision will be by the Commission. Whenever a petition to quash a subpoena is properly filed under this Section, the petitioner shall not be required to respond to ~~the~~sue~~ch~~ subpoena until the petition has been ruled upon.
- e) Enforcement – Whenever any ~~person~~Person shall knowingly fail or refuse to comply with a subpoena served in accordance ~~with this Section~~herewith, the Commission, at the instance of the ~~person~~Person serving the subpoena, shall petition the appropriate circuit court pursuant to Section 8-104(E) of the Act for an order enforcing ~~the~~sa~~id~~ subpoena.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

SUBPART C: SETTLEMENTS

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

Section 5300.330 Non-Compliance

- a) When the Department believes that a party has violated written terms of a settlement approved by the Commission, it may file a notice with the Commission, with service upon all parties, specifying the nature of the alleged violation and praying for an order remanding the matter for hearing or authorizing the Department to seek judicial enforcement.
- b) Whenever the Department files a notice of a violation, the party allegedly violating the Commission's order may file a response with the Commission within ~~fifteen~~(15) days after service of the notice upon it. A ~~3~~ three-member panel of the Commission shall consider the Department's notice and the response, if any, and shall enter an order, with service on the parties and the Department, which shall either direct the Department to seek judicial enforcement pursuant to Section 8-111(~~Cb~~) of the Act, remand the matter to an Administrative Law Judge, or find that no violation exists. If the Commission determines that a violation has occurred, it will instruct the Department to seek judicial enforcement. If the Commission is unable to determine whether ~~or not~~ a violation has occurred, it will remand the matter to an Administrative Law Judge for a hearing.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

SUBPART D: REQUEST FOR REVIEW

Section 5300.400 Applicability of the Subpart

- a) This Subpart D applies only to requests for review in cases in which the charge was filed after January 1, 2008. Pursuant to Section 8-103 of the Act, the Commission has jurisdiction over requests for review in cases in which the cause of action was filed on or after January 1, 2008.
- b) After January 1, 2008, all requests for review received by the Department will be evaluated by Department staff to determine if the ~~perfected~~ charge in the case was filed on or after January 1, 2008. If the ~~perfected~~ charge was, in fact, filed on or after January 1, 2008, the staff of the Department will stamp the date the request for review was received by the Department on the face of that document and then forward it to the Commission for processing pursuant to Section 8-103 of the Act.

HUMAN RIGHTS COMMISSION

NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 5300.410 Filing with Commission

A party may request review by the Commission of a decision by the Department to dismiss or default, by filing a request for a review therefor with the Commission at its Chicago office within thirty (30) days after receipt of the Department's notice of its decision. The Such request may be accompanied by argument and supporting materials. Except by permission of the Commission, the request, argument and supporting materials shall not exceed 30 pages.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 5300.440 Reply to Response

The party filing the request may, within fifteen (15) days after service of the response, file a reply with the Commission, with service on the Department at the same time. Only replies that which are limited to addressing issues raised in the response will be considered by the Commission. Except by permission of the Commission, the reply shall not exceed 30 pages.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 5300.450 Extensions of Time

- a) A party's Party's timely request Request for review Review or timely reply to the Department's response pursuant to this subsection may seek additional time to file argument and material in support thereof. A request for additional time not exceeding thirty (30) days shall be granted by the Commission through the issuance by the Executive Director of a written order served on the party Party filing the request and on the Department. A request for additional time exceeding the aforementioned limitation shall be granted by the Commission, through a three-member panel, only upon a showing of special circumstances. Any additional argument or material filed pursuant to this subsection Subsection shall be served at the same time on the Department by the party Party filing it. The Department shall file its response in accordance with Section 5300.430 within thirty (30) days after receipt of the additional argument or materials.
- b) The Department may request additional time to file its response by filing a written motion with the Commission, serving a copy at the same time on the party Party filing the request Request for review Review. A request for additional time not

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exceeding ~~thirty (30)~~ days shall be granted by the Commission through the issuance by the Executive Director of a written order served on the ~~party~~Party filing the ~~request~~Request for ~~review~~Review and on the Department. A request for additional time ~~exceeding the aforementioned limitation~~ will be granted by the Commission, through a ~~three~~-member panel, only upon a showing of special circumstances.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

SUBPART G: DISCOVERY AND PRACTICE

Section 5300.720 Discovery

- a) For all ~~complaints~~Complaints not proceeding under the alternative hearing procedure, discovery shall be obtainable through the following methods:
 - 1) Written Interrogatories – A ~~party~~Party may direct written interrogatories to any other ~~party~~Party, serving copies of ~~thesuch~~ interrogatories at the same time on all other ~~parties~~Parties. ~~TheSuch~~ interrogatories shall be restricted to the subject matter of the ~~complaint~~Complaint or defense and shall avoid undue detail or the imposition of excessive burden or expense on the answering ~~party~~Party. Within 28 days after service of the interrogatories upon the answering ~~party~~Party, the answering ~~party~~Party shall serve upon the propounding ~~party~~Party an answer under oath or affirmation, or an objection, to each interrogatory, serving copies of ~~thesuch~~ answers and objections at the same time on all other ~~parties~~Parties. Any objection to an answer or refusal to answer an interrogatory shall, upon motion of the ~~party~~Party propounding the interrogatory, be ruled upon by the Administrative Law Judge. ~~When~~Where appropriate, a document may be served in answer to an interrogatory. Supplemental interrogatories shall not be allowed except on leave of the Administrative Law Judge for good cause shown.
 - 2) Production, Inspection, Copying or Photographing of Documents and Tangible Things – A ~~party~~Party, by written request served upon all other ~~parties~~Parties, may require any other ~~party~~Party to produce for inspection, copying or photographing any document, object or tangible thing ~~thatwhich~~ is relevant to the subject matter of the ~~complaint~~Complaint or defense. The ~~party~~Party upon whom the request is served shall respond to

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the request within 28 days, stating, with respect to each item or category, that inspection and related activities will be permitted as required, unless the request is objected to, in which event the reasons for objection shall be stated. The response shall be served on all parties~~Parties~~. On motion of the requesting party~~Party~~, the Administrative Law Judge shall rule with respect to thesueh objections.

3) Depositions

A) A deposition may be taken as of right only under the provisions of Section 8-104(F) of the Act.

B) A party~~Party~~ may take discovery depositions either for good cause shown or by agreement. A discovery disposition taken for good cause or by agreement may be taken only upon leave of the Administrative Law Judge. No party~~Party~~ shall serve a notice of deposition for a discovery deposition without leave of the Administrative Law Judge.

b) Prior to the time all respondents~~Respondents~~ have answered or are required to answer, no discovery procedure shall be noticed or undertaken, except by agreement of the parties~~Parties~~ or with leave of the Administrative Law Judge for good cause shown.

c) At any time, the Administrative Law Judge may, on his/her own motion or on motion of any party~~Party~~ or witness, make such protective Orders as justice and fairness may require, and any other Order denying, limiting, conditioning or regulating discovery, including setting or modifying any due date for discovery, including requests for admission of fact and requests for admission of genuineness of document (Section 5300.745), upon a finding of substantial compliance by the Administrative Law Judge.

d) All matters that are privileged against disclosure in civil cases in the courts of the State of Illinois shall be privileged against disclosure through any discovery procedure under this Section~~hereunder~~. When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or statutory privilege, thatany sueh claim shall be made

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expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege ~~that~~which is being claimed.

- e) The types of discovery of information from ~~parties~~Parties and witnesses shall be the same as in other civil cases in the circuit courts of this State, except as provided for discovery depositions ~~in subsection (a)(3) above~~. The procedure for obtaining discovery of information from ~~parties~~Parties and witnesses shall be as specified in this Part. If this Part does not contain a procedure with respect to a particular type of discovery, the Code of Civil Procedure [735 ILCS 5] will be considered persuasive authority by the Commission. ~~When~~Where the Code of Civil Procedure makes reference to "rules," the applicable Supreme Court Rules on discovery will also be considered.
- f) The hearing of a matter shall not be delayed to permit discovery unless due diligence is shown.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 5300.730 Motions and Objections

- a) Motions and objections directed to the Administrative Law Judge pursuant to the authority granted in Section 5300.530(b) ~~of this Part~~ may be stated in writing or on the record, except for a motion to amend the pleadings pursuant to Section 5300.650(a) ~~of this Part~~, which must be in writing.
- 1) A written motion shall briefly state the Order or relief requested and the specific grounds upon which relief is sought.
 - 2) A written motion shall be served at the same time upon all ~~parties~~Parties and filed at the Commission office of the Administrative Law Judge to whom it has been directed.
 - 3) The following motions shall also be served upon the Department:
 - A) Motion to dismiss and any response ~~to the motion thereto~~ pursuant to Section 5300.640(b) ~~of this Part~~. This subsection (a)(3)(A) shall be construed to include any motion for summary decision, or other motion regardless of title, that requests dismissal of the complaint;

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- B) Motion to amend the pleadings pursuant to Section 5300.650(a) ~~of this Part~~; and
- C) Motion to allow a Commission or Department employee to testify at a hearing pursuant to Section 5300.750(b)(4) ~~of this Part~~.
- b) Except as provided in subsection (f) ~~of this Section~~, for motions to dismiss, the ~~complaint~~ Complainant and motions for summary decision, responses to written motions may be filed by any ~~party~~ Party within ~~5~~ five days after service of the motion, or within ~~any such~~ other period as the Administrative Law Judge may order, and shall be served at the same time upon all other ~~parties~~ Parties. In deciding whether to extend the period for responding to the motion, the Administrative Law Judge shall consider the complexity of the issues raised by the motion, and the ability of the responding ~~party~~ Party to file a response within the ~~5~~ five day period. Except under extraordinary circumstances, the time for responding to a motion shall not exceed 45 days. The Administrative Law Judge may, on his/her own motion or motion of the Department, enter an Order permitting the Department to file a response to a written motion. In deciding whether to allow the Department to file a response, the Administrative Law Judge shall consider:
- 1) Whether resolution of the motion raises issues beyond those involved in the specific case;
 - 2) Whether the Department has an interest different from that of the ~~complainant~~ Complainant or ~~respondent~~ Respondent; and
 - 3) Whether the Department can articulate a particular point of view better than one or both ~~parties~~ Parties.
- c) Written motions and responses ~~thereto~~ should set forth the arguments and authorities relied upon to permit the Administrative Law Judge to make a decision without oral argument on the motion.
- d) Except as provided in subsection (f) ~~of this Section~~, for motions to dismiss and motions for summary decision, except ~~as to~~ motions arising out of ~~complaints~~ Complaints proceeding under the alternative hearing procedure of Section 8A-102.5 of the Act and except for those motions made in the course of

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public hearing, all motions arising out of ~~complaints~~Complaints in which the site of the alleged civil rights violation is in Cook County shall be heard at the Commission's office in Chicago. Written Notice of Hearing on ~~the~~such motion shall be filed at the Commission's office in Chicago, along with a copy of the motion, and served upon all ~~parties~~Parties and also upon the Department as specified in subsection (a) ~~of this Section~~. The Notice of Hearing on the motion shall show the name of the Administrative Law Judge before whom, and the date and time when, the motion shall be presented. The motion shall be in writing and a copy of the motion or a statement that it previously has been served shall be served with the notice. Copies of all papers to be presented to the Administrative Law Judge with the motion shall be served with the notice or the notice shall state that copies have previously been served. The moving ~~party~~Party shall schedule the motion for hearing by entering the case name ~~and~~, ALS number and the nature of the motion in the motion book in the Commission's Chicago office.

- 1) If notice of hearing is given by personal service, the notice shall be delivered before 4:00 P.M. on the second State business day preceding the hearing of the motion.
- 2) If notice is given by mail, the notice shall be deposited with the U.S. Postal Service in a United States Post Office or Post Office Box no later than the fifth State business day preceding the hearing of the motion. The certificate of service attached to the motion will be prima facie proof of the date the notice is ~~deposited with the U.S. Postal Service~~placed in a Post Office Box.
- e) All motions arising out of ~~complaints~~Complaints in which the site of the alleged civil rights violation is outside Cook County and all motions arising out of ~~complaints~~Complaints proceeding under the alternative hearing procedure of Section 8A-102.5 of the Act shall be governed by the procedures specified in subsections (a), (b) and (c) ~~of this Section~~. These motions shall not be noticed for hearing at the Commission's office in Chicago; however, if all of the ~~parties~~Parties to a ~~complaint~~Complaint, except to a ~~complaint~~Complaint proceeding under the alternative hearing procedure of Section 8A-102.5 of the Act, in which the site of the alleged discrimination is outside Cook County agree to appear for a hearing on a motion at the Commission's Chicago office, the procedure specified in subsection (d) ~~of this Section~~ may be utilized.
- f) Regardless of the site of the alleged civil rights violation, all motions to dismiss

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the ~~complaint~~Complaint and all motions for summary decision shall be filed and responded to in accordance with the procedures set forth in subsections (a), (b), and (c)~~-of this Section~~.

- g) All motions on ~~complaints~~Complaints proceeding under the alternative hearing procedure shall be decided by the selected Administrative Law Judge based on the written motions and responses ~~thereto~~ only, except when the Administrative Law Judge deems oral argument useful; ~~in that case~~then, the Administrative Law Judge shall issue an Order setting a date and time for the motion to be argued. ~~Oral~~Such ~~oral~~ argument may be set at a Commission office or by telephone conference hearing.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 5300.735 Summary Decision

- a) At any time after the service of a ~~complaint~~Complaint and prior to service of a decision pursuant to Section 8A-102(I), ~~Section 8A-102.5(B)(4)~~ or ~~Section 8B-102(J)~~ of the Act, the ~~complainant~~Complainant or the ~~respondent~~Respondent may move, with or without supporting affidavits, for a summary Order in the moving ~~party's~~Party's favor as to all or any part of the relief sought. An Administrative Law Judge may not preclude the filing of a motion for summary decision except within the 60-day period prior to the date set for the hearing on the merits of the ~~complaint~~Complaint. Once the Administrative Law Judge has set a deadline for the filing of the motions for summary decisions in accordance with this Section, no ~~such~~ motion may be filed after that date without leave of the Administrative Law Judge, even if the hearing on the merits is postponed.
- b) Procedure – The non-moving ~~party~~Party may file counter-affidavits prior to the time of the ruling on the motion. The Order sought shall be rendered without delay if the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving ~~party~~Party is entitled to a ~~recommended~~Recommended Order as a matter of law. An interim recommended summary Order, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the relief to be awarded. The term *"without delay"* (Section 8-106.1(B) of the Act) means that consideration of the motion shall not be stayed without the agreement of the ~~parties~~Parties. Further, the Administrative Law Judge may not postpone consideration of the motion until after the public hearing. The term does not

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mean that motions for summary decision will be given preference over other pending motions in the case at issue or other cases pending in front of the Commission.

- c) Affidavits or Motions Made in Bad Faith – If it appears to the satisfaction of the Administrative Law Judge at any time that any affidavit or motion presented pursuant to this Section is presented in bad faith or solely for the purpose of delay, the Administrative Law Judge may recommend that the partyParty employing the use of affidavits for dilatory purposes shall pay to the other partyParty the amount of reasonable expenses incurred as a result of the filing of the affidavit or motion, including reasonable attorney's fees.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

SUBPART H: PRACTICE IN FRONT OF THE COMMISSION

Section 5300.835 Emergency Motions

- a) If action is required on a motion prior to the time of the next scheduled Commission meeting at which the requested relief could be statutorily granted, the motion shall be clearly identified as an emergency motion. All emergency motions shall contain a memorandum stating why the motion must be decided prior to the time of the appropriate Commission meeting. All emergency motions shall be presented by Commission staff to the Chairperson, or the Vice Chair in the absence of the Chairperson, of the Commission.
- b) The Chairperson, or the Vice Chair in the absence of the Chairperson, of the Commission shall have the authority to consider and grant motions filed under subsectionSubsection (a) ~~of this Section~~ if, and only if, the sole relief requested in the motion is the extension of a filing deadline imposed by the Act or this Part. The Chairperson, or the Vice Chair in the absence of the Chairperson, shall grant thosesuch motions only on just terms; and for good cause shown.
- c) The Chairperson, or the Vice Chair in the absence of the Chairperson, of the Commission shall have the authority to direct the convening of an emergency fullFull Commission or panelPanel meeting to consider an emergency motion. The emergency meeting shall be convened when a party will suffer irreparable damage if the motion is not considered until the next appropriate, regularly scheduled meeting. The following examples illustrate situations in which an

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emergency meeting will be convened. This is not an exhaustive listing of all situations in which an emergency meeting will be considered appropriate:

- 1) An emergency meeting will be convened if a delay in petitioning the circuit court for enforcement of a subpoena will make it difficult or impossible for the court to enforce the subpoena.
- 2) An emergency meeting will be convened if a Commission Order is being violated, and a delay in an action for enforcement will make it difficult or impossible to put the parties into the position they would have been in had there been no violation of the [Order](#).
- 3) An emergency meeting will be convened upon the motion of the Department if a delay in the approval of the terms and conditions of a settlement makes it difficult or impossible for either party to comply with the terms of the settlement.
- d) Every emergency motion shall contain a proposed [Order](#) granting the relief requested by the movant.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

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

<u>Section Numbers:</u>	<u>Proposed Action:</u>
50.230	Amendment
50.320	Amendment
 - 4) Statutory Authority: Implementing Articles I through IXA and authorized by Sections 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13]
 - 5) A Complete Description of the Subjects and Issues involved: This rulemaking is being proposed to establish that during the period of November 1, 2009 through September 30, 2011, or as long as American Recovery and Reinvestment Act (ARRA) funds are available, the child care co-payment fees will be reduced by 15%. This rulemaking is also being proposed to bring the income guidelines up to the same level as the TANF benefit services level that is 200% of the federal poverty level and is within the current child care operating budget. This rulemaking increases the monthly income thresholds so that low-income families will remain eligible for child care assistance longer and more new families will be eligible to receive care. Increasing the income thresholds helps stabilize job retention and allows a parent to accept some raises and promotions without fear of losing their child care. This proposed rulemaking will also affect child care providers by helping them to keep their enrollment numbers up.
 - 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
 - 7) Will this rulemaking replace any emergency rulemaking 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? Yes
- | | | |
|-------------------------|-------------------------|------------------------------------|
| <u>Section Numbers:</u> | <u>Proposed Action:</u> | <u>Illinois Register Citation:</u> |
| 50.230 | Amendment | 33 Ill. Reg. 7258; June 5, 2009 |
| 50.320 | Amendment | 33 Ill. Reg. 7258; June 5, 2009 |

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- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand 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 these rules within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

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

217/785-9772
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Child care providers
 - 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: July 2009

The full text of the Proposed Amendments is identical to that of the Emergency for this rulemaking, and begins in this issue of the *Illinois Register* on page 15889:

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED REPEALER

- 1) Heading of the Part: Toxic Substances Disclosure to Employees
- 2) Code Citation: 56 Ill. Adm. Code 205
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
205.20	Repeal
205.200	Repeal
205.210	Repeal
205.220	Repeal
205.230	Repeal
205.240	Repeal
205.250	Repeal
205.260	Repeal
205.270	Repeal
205.280	Repeal
205.290	Repeal
205.300	Repeal
205.310	Repeal
205.APPENDIX A	Repeal
205.APPENDIX B	Repeal
205.TABLE A	Repeal
- 4) Statutory Authority: Toxic Substance Disclosures to Employees Act [820 ILCS 255]
- 5) A Complete Description of the Subjects and Issues Involved: The repeal of these rules is necessary to correlate with the September 17, 2007 changes to the Toxic Substances Disclosure to Employees Act, PA 95-623, which stays the provisions of the Act for so long as the Hazard Communication Standard is in effect and enforced.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: OSHA Hazard Communication Standard (29 CFR 1910.1200) and PA 95-623.
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No

ILLINOIS DEPARTMENT OF LABOR

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- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments may be submitted in writing, within 45 days of this Notice to:
- Cheryl J. Neff
Industrial Hygienist
Illinois Department of Labor
#1 West Old State Capitol Plaza, Suite 300
Springfield, Illinois 62701
- Telephone: 217/782-9386
Facsimile: 217/785-8776
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Public sector in Illinois
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: Departmental oversight.

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

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED REPEALER

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER I: DEPARTMENT OF LABOR
SUBCHAPTER b: REGULATION OF WORKING CONDITIONS

PART 205

TOXIC SUBSTANCES DISCLOSURE TO EMPLOYEES [\(REPEALED\)](#)

SUBPART A: GENERAL PROVISIONS

Section

205.20 General Purpose

SUBPART B: REQUIREMENTS

Section

205.200 Definitions
205.210 Employee Rights
205.220 Submission of Information to the Department of Labor
205.230 Labeling
205.240 Posting of Signs
205.250 Training
205.260 Enforcement Hearing Procedures
205.270 Toxic Substances List Additions/Deletions (Repealed)
205.280 Material Safety Data Sheets (MSDS)
205.290 Trade Secret Procedures
205.300 Fire Safety
205.310 Exemptions

205.APPENDIX A Hazard Warnings (Non-mandatory Guidance)

205.APPENDIX B Trade Secrets

205.TABLE A Toxic Substances List (Repealed)

AUTHORITY: Implementing and authorized by the Toxic Substances Disclosure to Employees Act [820 ILCS 255].

SOURCE: Emergency rules adopted at 8 Ill. Reg. 3402, effective March 1, 1984, for a maximum of 150 days; adopted at 8 Ill. Reg. 7838, effective May 23, 1984; emergency amendments at 8 Ill. Reg. 15628, effective August 14, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7751, effective October 29, 1984; amended at 11 Ill. Reg. 10247, effective

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May 18, 1987; amended at 11 Ill. Reg. 14717, effective August 24, 1987; amended at 15 Ill. Reg. 16084, effective October 28, 1991; amended at 21 Ill. Reg. 10932, effective July 25, 1997; amended at 25 Ill. Reg. 925, effective January 5, 2001; repealed at 34 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 205.20 General Purpose

Pursuant to the P.A. 83-240, the initial list of toxic substances shall be those set forth in Table A of this Part.

SUBPART B: REQUIREMENTS

Section 205.200 Definitions

In addition to those definitions found in Section 3 of the Toxic Substances Disclosure to Employees Act [820 ILCS 255] (the Act), the following definitions shall apply for purposes of this Subpart:

"Article" means a manufactured item:

which is formed to a specific shape or design during manufacture;

which has end use function(s) dependent in whole or in part upon its shape or design during end use; and

which does not release, or otherwise result in exposure to a hazardous chemical under normal conditions or use.

"Authorized person" is a person who has been authorized by the Director to have access to confidential information under control of the Department in accordance with this Part.

"Contractor" means a person, firm, or corporation that provides services to another employer pursuant to an agreement between the other employer and the contractor. Contractors shall be deemed the sole employer of their employees.

"Department" means the Illinois Department of Labor.

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"Identity" means any chemical or common name which is indicated on the Material Safety Data Sheet (MSDS) for the chemical. The identity used shall permit cross references to be made between the labels and the MSDS.

"Technically qualified individual" means anyone who possesses at least an associate's degree or its equivalent or who possesses a professional license or certificate issued by the State of Illinois for which scientific knowledge or course work in science is required for certification, for example, Wastewater Treatment Class 4 license or Public Water Supply Class D license.

Section 205.210 Employee Rights

- a) Illinois Employees have a right to information about toxic substances at their workplaces. The Act specifies a number of ways for this information to be provided to employees by their employers. These are:
 - 1) A poster listing employee rights in an accessible location. [820 ILCS 255/7]
 - 2) Material Safety Data Sheets (MSDS). Copies must be made available to employees, their designated representatives, and their treating health care professional within ten days of a written request except as provided in subsection (b) below. [820 ILCS 255/9]
 - 3) Annual training to routinely exposed employees. Transferred employees must be trained prior to beginning their new work assignment which involves routine exposure to a toxic substance. [820 ILCS 255/16]
 - 4) The labeling of containers of toxic substances with the chemical name(s) and appropriate hazard warnings as determined in Section 205.230. Fixed containers within a workplace need not be labeled, but the required information must be available in the employee's work area. [820 ILCS 255/8]
- b) Employees may refuse to work with a *toxic* substance if their employer has not supplied a Material Safety Data Sheet after the employee requested it in writing, and if the employer has not made a good faith effort within a time limit as specified in Sections 9(d) and 14(a) of the Act to get the Material Safety Data

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Sheet from the supplier or manufacturerF2. [820 ILCS 255/14]

- c) Employees may not be discharged or otherwise disciplined or discriminated against in any manner by an employer for exercising their rights under the Act. [820 ILCS 255/14]
- d) If an employee(s) believes that he/she has been denied his/her rights under the Act, the employee (or his/her representative) may file a complaint with the Illinois Department of Labor within 180 days of such denialF2. [820 ILCS 255/14]

Section 205.220 Submission of Information to the Department of Labor

- a) By June 30, 1984, and annually thereafter, every employer shall submit to the Director of the Department of Labor an alphabetized list of substances, compounds, or mixtures for which the employer has acquired after January 1, 1984, a Material Safety Data Sheet (MSDS). [820 ILCS 255/5]
- b) By June 30, 1984, and annually thereafter, manufacturers, importers or suppliers of substances, compounds, or mixtures, must, in addition to the alphabetized list required in subsection (a) above, submit *a list of MSDSs for every product it produces, imports, or supplies. The manufacturer, importer, or supplier shall make a copy of any MSDS on the list immediately available, but only upon the request of the Director.* [820 ILCS 255/5]
- c) The employer, manufacturer, importer, or supplier need not submit a MSDS or add to the alphabetized list for the following:
 - 1) Any substance, compound, or mixture which they do not use, store, produce, or sell.
 - 2) Any substance, compound, or mixture which appears on the initial or any subsequent toxic substance list as filed with the Secretary of State, if the employer, manufacturer, importer or supplier has previously submitted a MSDS or provided the name of such substance unless the employer, manufacturer, importer, or supplier has compiled or acquired new and significant information regarding hazards of a toxic substance.
- d) For purposes of compiling the alphabetized list, the employer, manufacturer, supplier, or importer may use the manufacturer's product or chemical name given

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to the substance as found on the MSDS.

- e) It will be acceptable for the MSDS for toxic substances received before January 1, 1984, to be submitted to fulfill the requirements of Sections 5 and 9 of the Act.

Section 205.230 Labeling

- a) Except as provided for in subsection (e) below, upon the effective date of these rules, each container of the toxic substances or mixture containing toxic substances in the workplace must display a label which conforms with Sections 8, 11 and 12 of the Act.
- b) If an employer has received an unlabeled container of toxic substances, the employer must label the container or must request a label in writing from the manufacturer, importer, or supplier.
- c) If the selling manufacturer, importer, or supplier fails to provide the employer with a label within 30 days in accordance with Section 11(a) of the Act, the employer may file a complaint in accordance with Section 17(a) of the Act.
- d) By taking action as described in subsection (c) above, the employer shall be deemed to have made a good faith effort to obtain a label for purposes of Sections 11(a) and 17 of the Act.
- e) Upon the effective date of these rules, each supplier, importer, or manufacturer who sells any toxic substance within the State of Illinois must label each container pursuant to Sections 8, 11 and 12 of the Act.
- f) Manufacturers, suppliers, or importers shall ensure that each container of toxic substances leaving the workplace is labeled, tagged or marked in accordance with the Act in a manner which does not preclude compliance with the requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq. (1970)) and 92 Ill. Adm. Code Code 172.2000.
- g) When labeled in accordance with federal requirements, the following substances shall be exempt only from the labeling provisions of the Act.
 - 1) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq. (1970)), with no

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further amendments included, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency (40 CFR 167 (1983)).

- 2) Any food, food additive, color additive, drug, or cosmetic, including materials intended for use as ingredients in such product (e.g., flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 et seq. (1970)), with no further amendments included, and regulations issued under that Act by the Food and Drug Administration (21 CFR 7 (1984)).
 - 3) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq. (1958)), with no further amendments included, and regulations issued under that Act, when subject to the labeling regulations issued under the Act by the Bureau of Alcohol, Tobacco, and Firearms (27 CFR 5 (1984)).
 - 4) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq. (1970)) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq. (1970)), respectively, with no further amendments included, when labeled according to the requirements of those Acts or regulations issued under those Acts by the Consumer Product Safety Commission (26 CFR 1101 (1984)) (16 CFR 1500 (1984)).
- h) Except as provided in subsections (i) and (j), the employer shall ensure that each container of toxic substances in the workplace is labeled, tagged, or marked with the following information:
- 1) Chemical name or identity of the toxic substance(s) contained therein. However, an employer may provide the information required with respect to an entire mixture, considered as a whole instead of with respect to each toxic substance contained in such mixture, provided that: toxicity testing information exists on the entire mixture or adequate information exists to form a valid judgement of the hazardous properties of the entire mixture, and provision of information on the entire mixture will be as effective in protecting employee health as the provision of information on each toxic substance contained in the mixture. [820 ILCS 255/8 and 12]

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- 2) Appropriate hazard warnings (see Appendix A for nonmandatory guidance). The appropriate hazard warnings for carcinogens shall include a cancer warning.
 - i) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to fixed containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by subsection (h) of this Section to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift.
 - j) The employer is not required to label portable containers (ten gallons or less in volume) into which toxic substances are transferred from labeled containers, and which are intended only for use by the employee who performs the transfer during his/her shift. [820 ILCS 255/8]
 - k) Employers or employees shall not remove or deface existing labels on incoming containers of toxic substances unless the container is immediately relabeled with the required information.
 - l) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.
 - m) The manufacturer, importer, supplier, or employer need not affix new labels to comply with this Section if existing labels already convey the required information. [820 ILCS 255/8]
 - n) Construction employers shall ensure that toxic substances, which they handle, store, receive, or bring to the construction workplace, are labeled.

Section 205.240 Posting of Signs

- a) Upon the effective date of these rules, each employer subject to the Act shall post, where normally posted in their workplace, a sign which informs the employees of their rights under the Act.

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- b) Such sign will be made available by the Department of Labor.
- c) The employer may use a sign other than that provided by the Department if such sign meets the requirements of Section 7 of the Act and lists the same rights as that provided by the Department.

Section 205.250 Training

- a) The employer shall provide training in accordance with Section 16 of this Act.
- b) Training for employees who are routinely exposed to a toxic substance, as defined in Section 16(a) of the Act, must be completed by November 23, 1984.
- c) Persons who become employees after the effective date of this section or who will be routinely exposed to a toxic substance for the first time must be trained prior to their working with a toxic substance.
- d) For purposes of training an employee whose employment has been terminated for any reason shall not be considered an employee after such termination.
- e) Information and training programs shall include:
 - 1) Specific exposure hazards, or
 - 2) Common hazards of a broad class of toxic substances, or hazards of a complete production operation, whichever is more effective. MSDS's on individual toxic substances or mixtures must be available in writing for employee's use. Proper use of all forms of written hazard communications, if available, shall be a part of the training program.
- f) Where the employees of a contractor are present at the workplace of a workplace owner, operator, or designee employer, the contractor shall be provided copies of MSDS used by the owner, operator, or designee employer for all toxic substances to which the contractor's employees may be routinely exposed.
- g) A contractor shall provide to the owner/operator Material Safety Data Sheets for any toxic substance used by the contractor at the workplace of the owner/operator.

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- h) Upon request, the Department shall provide an employer with *a summary written by the Department which includes a summary of the employee's rights and obligations under the act and a readily understandable explanation of how to read and understand a MSDS* (Ill. Rev. Stat. 1985, ch. 48, par. 1416).

Section 205.260 Enforcement Hearing Procedures

Resolutions of complaints alleging violations of the Act will be pursued in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10] and 56 Ill. Adm. Code 120.

Section 205.270 Toxic Substance List Additions/Deletions (Repealed)**Section 205.280 Material Safety Data Sheets (MSDS)**

- a) *Manufacturers and importers shall obtain or develop a material safety data sheet for each toxic substance they use, store, produce, or import. Employers shall have a material safety data sheet for each toxic substance they use* (Ill. Rev. Stat. 1985, ch. 48, par. 1409).
- b) Suppliers shall ensure that Material Safety Data Sheets, and updated information, are provided to other distributors and purchasers of toxic substances.
- c) Each Material Safety Data Sheet shall be in English.
- d) If the toxic substance is a single substance, its chemical and common name(s) shall be provided on the MSDS, except as provided for in Section 205.290 of this Part.
- e) If the toxic substance is a mixture which has been tested as a whole to determine its hazards, the chemical and common name(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself shall be provided on the MSDS, except as provided for in Sections 205.290 and 205.310 of this Part.
- f) If the toxic substance is a mixture which has not been tested as a whole, the chemical and common name(s) of all ingredients which have been determined to be toxic substances and which comprise one percent or greater of the composition shall be provided on the MSDS, except as provided for in Section 205.290 of this part. Chemical and common name(s) of ingredients identified as known or

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suspected carcinogens shall be listed if the concentrations are greater than 0.1 percent except as provided for in Sections 205.290 and 205.310 of this Part.

- g) In batch processes where complex mixtures have the same hazards and similar contents (i.e., the chemical ingredients are essentially the same but the specific composition varies slightly from mixture to mixture), the manufacturer, importer, or employer may prepare one Material Safety Data Sheet to apply to all of the similar mixtures.
- h) The manufacturer, importer, supplier or employer preparing the Material Safety Data Sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the manufacturer, importer, supplier or employer becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new information shall be added to the Material Safety Data Sheet within three months.
- i) Manufacturers or importers shall ensure that distributors and initial purchasers of toxic substances are provided an appropriate Material Safety Data Sheet within 30 days of the initial shipment of a toxic substance or after a Material Safety Data Sheet is updated. The manufacturer or importer shall either provide Material Safety Data Sheets with the shipped containers or send them to the purchaser within 30 days of the first shipment.
- j) Material Safety Data Sheets may be kept in any form and may be designed to cover groups of toxic substances in a work area where it may be more appropriate to address the hazards of a process rather than individual toxic substances. However, the employer shall ensure that in all cases the information required is provided for each toxic substance, and is accessible pursuant to Section 9 of the Act. Employers need only maintain Material Safety Data Sheets in one central location within their workplace.
- k) If the toxic substance is regulated as a pesticide (as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 7 U.S.C. 136 et seq. (1970)), with no further amendments included, and subject to the labeling requirements and regulations issued by the U.S. EPA under the Act, the manufacturer, importer, supplier, or employer shall ensure that the MSDS or labels used are in accordance with such EPA regulations (40 CFR 167(1983)).

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- l) Upon the effective date of these rules, each employer must have a MSDS available at the workplace for each toxic substance used, produced, or stored, except as provided for in Section 9(d) of the Act. Such MSDS must be available to employees upon request according to the provisions of the Act.
- m) All manufacturers, importers, and suppliers must meet their obligation to supply MSDS's.
- n) Any person may use Occupational Safety and Health Administration Form 20 or 174 if they ensure that all of the information required by Section 3(j) of the Act is provided.
- o) The Department shall implement a quality assurance program to review the MSDS for compliance with Section 3(j) of the Act.

Section 205.290 Trade Secret Procedures

- a) *The Department shall determine that a toxic substance is a trade secret if:*
 - 1) *The employer, manufacturer, importer, or supplier has asserted a written trade secret claim which has not expired by its terms nor been waived or withdrawn and conforms to the following:*
 - A) *The whole or any portion or phrase of any specific or technical information, design, process, procedure, formula or improvement or business plan which has not been published or disseminated or otherwise become a matter of general public knowledge and which has a competitive value.*
 - B) *A trade secret is presumed to be a secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto.*
 - 2) *The substance is identified by a generic chemical classification which would permit independent toxicological evaluation by a health professional.*
 - 3) *All other information on the properties and effect of the substance is*

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contained in the MSDS as required by Section 3(j) of the Act.

- 4) *The MSDS indicates which category of the information is being withheld on trade secret grounds.*
 - 5) *The withheld information shall be provided by the trade secret holder on a confidential basis to a treating health care professional who states in writing that a patient's health problems may be the result of occupational exposure.*
 - 6) *A statement with the name of the holder of the trade secret information and an emergency telephone number shall be included on the MSDS.*
 - 7) *In an emergency medical situation, as determined by the fire department, user, employee, employee representative or treating health care professional, the holder of the trade secret shall disclose the trade secret to the treating health care professional without requiring the prior signing of any written statement (Ill. Rev. Stat. 1983, ch. 48, par. 1413).*
- b) Until the trade secret designation is granted, the MSDS shall indicate all information required in Section 3(j) of the Act, except the chemical name which is the subject of the trade secret request.
 - c) The manufacturer, importer, supplier or designated representative shall set an appointed time with the Department to deliver or mail the trade secret request. The appointed time shall be agreeable to both parties and shall be confirmed in writing by the Director.
 - d) Information needed by the Department to make a trade secret determination is as follows:
 - 1) Trade secret questionnaire completed (See Appendix B);
 - 2) A completed Material Safety Data Sheet without the chemical name;
 - 3) The information/chemical name which is the subject of the trade secret request;
 - 4) A description with detailed procedures on how the requester will deal with

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emergency and non-emergency requests for disclosures of the trade secret;
and

- 5) A description of the training program for preparing employees to deal with trade secret toxic substances.
- e) The Department will determine at the time of the trade secret review whether the information submitted pursuant to Subsection (d) is complete.
- f) If the trade secret request is deemed complete by the Department, a written statement to that effect will be provided by the Department. This will include a statement as to whether the trade secret designation is approved or disapproved within 30 days of the receipt by the Department of the trade secret request. All trade secret information shall be returned with the approval or disapproval.
- g) If the trade secret request is deemed to be administratively incomplete, the requester of the trade secret designation will be given clear, written indication of the additional information and documents needed within 30 days of the receipt by the Department of the trade secret request.
- h) When the additional information is obtained, the requester of trade secret designation shall repeat the steps in Subsections (c) through (e) above.
- i) No trade secret information will be left with or mailed to the Department without prior written confirmation as described. If for some reason such information is left at or mailed to the Illinois Department of Labor without such prior written Confirmation by the Director, the Department will not take extraordinary precaution to protect the trade secret but will mail the information back to the provider of such information at the earliest convenience time.
- j) The Department shall maintain a log of trade secret approvals with at least the requester's name, product name, trade name, date of letter or confirmation or review, data of receipt, date of approval and duration of the trade secret.
- k) Only an authorized person shall have access to trade secret information which has arrived at the Department by appointment pursuant to Subsection 9(d) above.

Section 205.300 Fire Safety

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- a) *Each employer with toxic substances in the workplace must contact the administrator of fire departments having jurisdiction over the location of such employer's workplace to arrange to provide information required under Section 15 of the Act. This information is as follows (Ill. Rev. Stat., 1985, ch. 48, par. 1415):*
- 1) The initial step is a notice by the employer that toxic substances are in the workplace and an indication of a desire to set up a meeting at the discretion of the fire department to present the necessary information.
 - 2) The employer with toxic substances on site must attempt to inform the fire department of:
 - A) The hazards of toxic substances used in the employer's workplace;
 - B) Associated fire hazards;
 - C) The layout of the workplace showing the locations where toxic substances are stored;
 - D) Entrances to roads inside the workplace; and
 - E) Possible evacuation routes.
- b) For the toxic substances on the list, employers, who have employees located at another employer's workplace pursuant to an agreement between the employers, need not comply with Section 15 of the Act as it applies to fire safety at the other employer's workplace.

Section 205.310 Exemptions

The following materials or operations are exempt from the provisions of the Act.

- a) *Use of toxic substances, compounds or mixtures regulated by The Act which are intended for personal consumption by employees in the workplace (Ill. Rev. Stat. 1985, ch. 48, par. 1406).*
- b) Hazardous and special wastes as defined in Section 3 of the Environmental Protection Act, (Ill. Rev. Stat. 1985, ch. 111½, par. 1003).

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- c) *Employees who purchase toxic substances for use in the workplace which are in approximately the same form, volume, concentration and for the same use as commonly sold by retail outlets as consumer goods shall be exempt from the provisions of The Act as it applies to such toxic substances (Ill. Rev. Stat. 1985, ch. 48, par. 1406).*
- d) *Consumer goods used, stored or sold by an employer, manufacturer, importer, retailer or supplier in the same form, approximate amount, concentration and manner as they are sold to consumers, provided that employee exposure to such consumer goods is not significantly greater than consumer exposure occurring during the principal consumer uses of the consumer goods. For purpose of this Act, "Consumer Goods" shall be defined in Section 9-109(1) of the Uniform Commercial Code (Ill. Rev. Stat. 1985, ch. 26, Par. 9109(1)).*
- e) Employers who transport any substance covered by the Act or regulations thereunder, which substances are transported consistent with Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq. (1970)), with no further amendments included, shall be exempt insofar as the portion of their operations directly involved with moving said substance by rail, highway, vessel and aircraft.
- f) Any substance received by an employer in a sealed package and subsequently sold or transferred in that package, if the seal remains intact while the substance is in the employer's workplace. The local fire department shall be notified in accordance with Section 205.300 and training must be provided to warehouse and similar employees who handle such substances to assure they know how to personally deal with a spill or other emergency involving the substance or are advised to contact a supervisor who is trained to deal with an emergency.
- g) Prescription drugs which are purchased, stored, sold, handled, prepared, packaged or distributed by pharmacists, physicians, nurses and other licensed personnel in a doctor's office or in a pharmacy, hospital, nursing home or other licensed health care facility.
- h) *Toxic substances present in a concentration of less than 1%. In the cases of carcinogens, mutagens or teratogens, only those substances shall be exempt which are present in a concentration of 0.1% or less. No substance shall be exempt under this paragraph which is present in concentrations exceeding threshold concentrations established by regulation of the Department. (Ill. Rev.*

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Stat. 1985, ch. 48, par. 1406).

- i) *Laboratories in which a toxic substance, compound or mixture regulated by This Act is used by or under the direct supervision of a technically qualified individual, provided that the toxic substance or mixture is not produced in the laboratories for commercial sale (Ill. Rev. Stat. 1985, ch. 48, Par. 1406).*
- j) *All retail trade establishments as listed in the "Standard Industrial Classification Manual" Division G, Retail Trade, published by the U.S. Government Printing Office, except The Act shall apply to those retail trade establishments listed within major groups 52 – building materials, hardware, garden supply, and mobile home dealers, and 55 – automotive dealers and gasoline service stations, except for those activities involving the retail sales of gasoline motor fuels or lubricants, or if the retail trade establishments are engaged in any of the following specific activities, This Act shall apply only to the retail trade establishments' involvement in such specific activities: paint mixing; finishing or refinishing operations using paint or paint related products; automobile battery servicing, photo finishing operations; and dry cleaning operations (Ill. Rev. Stat. 1985, ch. 48, par. 1406).*
- k) Articles as defined in Section 205.200 of this Part.

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Section 205.APPENDIX A Hazard Warnings (Non-mandatory Guidance)

Appropriate hazard warnings should include:

1. Physical hazards, classified and listed as:
 - corrosive
 - irritant
 - reactive
 - oxidizers
 - flammable/combustible
 - explosive
2. Health hazards, classified and listed as:
 - acutely toxic
 - chronically toxic
 - carcinogenic
 - mutagenic
 - teratogenic
 - sensitizing agent
3. Route of entry.
4. Symptoms, acute and chronic exposure.
5. Safe handling procedures.
6. Emergency procedures.

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The above information should be derived from the Material Safety Data Sheet provided by the manufacturer, supplier or importer. This information should, in the case of #2 and #4, be based on "substantial scientific evidence" (Section 3(j)(4)) of the Act.

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Section 205.APPENDIX B Trade Secrets

Trade Secret Questionnaire

Manufacturer's Name:

Contact Person:

Telephone Number:

Holder of Trade Secret:

Telephone Number:

Trade Secret Statement or Assertion:

Period of Time of Trade Secret:

Has the trade secret substance been disclosed with the trade name product via any scientific or technical publications?

Has the trade secret substance been disclosed with the trade secret product via general public knowledge?

Has the holder of the trade secret taken reasonable precautions to prevent it from becoming available to persons other than those selected by the holder?

Signature of the holder of the trade secret.

Name _____

Title _____

Telephone Number _____

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Section 205.TABLE A Toxic Substances List (Repealed)

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- 1) Heading of the Part: Incidental Taking of Endangered or Threatened Species
- 2) Code Citation: 17 Ill. Adm. Code 1080
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1080.10	Amendment
1080.20	Amendment
1080.30	Amendment
1080.40	Amendment
1080.50	Amendment
1080.65	New Section
- 4) Statutory Authority: Implementing and authorized by Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5]
- 5) A Complete Description of the Subjects and Issues Involved: Amendments to this Part are necessary to add standard measures that can be included in a conservation plan that will allow faster and more efficient review and approval of certain incidental take authorizations. Amendments are being made to: modify newspaper publication requirements, plan submittal requirements and the deadline for receipt of public comments; authorize the Department to develop standard measures for minimizing, mitigating, and/or compensating for the effects of specific types of actions; allow applicants to adopt Department-approved standard measures in lieu of developing their own measures; and to modify language to clarify the options available to applicants for authorization of incidental take.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.

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

Stanley Yonkauski, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/782-1809

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2009

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

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TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER c: ENDANGERED SPECIESPART 1080
INCIDENTAL TAKING OF ENDANGERED OR THREATENED SPECIES

Section	
1080.10	Conservation Plan
1080.20	Notice and Review of Conservation Plans
1080.30	Comments
1080.40	Final Review
1080.50	Notice of Decision
1080.60	Effective Date, Term
<u>1080.65</u>	<u>Standard Measures</u>
1080.70	Separability, Exclusions
1080.80	Appeal, Revocation

AUTHORITY: Implementing and authorized by Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5].

SOURCE: Adopted at 25 Ill. Reg. 9877, effective July 17, 2001; amended at 34 Ill. Reg. _____, effective _____.

Section 1080.10 Conservation Plan

Incidental taking of endangered and threatened species shall be authorized by the Department of Natural Resources (Department) only if the applicant submits to the Department a conservation plan that satisfies all criteria established in this Part.

- a) A conservation plan submitted to the Department's Office of Resource Conservation as the application for authorization for incidental taking of an endangered or threatened species shall, at a minimum, include:
 - 1) A description of the impact likely to result from the proposed taking of the species that would be covered by the authorization, including but not limited to:

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- A) legal description, if available, or detailed description including street address and map of the area to be affected by the proposed action and indicia of ownership or control of affected property;
 - B) biological data on the affected species; on request of the applicant, the Department shall provide biological data in the Department's possession on the affected species;
 - C) description of the activities that will result in taking of an endangered or threatened species; and
 - D) explanation of the anticipated adverse effects on listed species.
- 2) Measures the applicant will take to minimize, ~~and~~ mitigate and/or compensate for that impact and the funding that will be available to undertake those measures, including, but not limited to:
- A) plans to minimize the area affected by the proposed action, the estimated number of individuals of an endangered or threatened species that will be taken and the amount of habitat affected;
 - B) plans for management of the area affected by the proposed action that will enable continued use of the area by endangered or threatened species;
 - C) description of all measures to be implemented to minimize, ~~or~~ mitigate and/or compensate for the effects of the proposed action on endangered or threatened species;
 - D) plans for monitoring the effects of measures implemented to minimize, ~~or~~ mitigate and/or compensate for the effects of the proposed action on endangered or threatened species;
 - E) adaptive management practices that will be used to deal with changed or unforeseen circumstances that affect the effectiveness of measures instituted to minimize, ~~or~~ mitigate and/or compensate for the effects of the proposed action on endangered or threatened species; and

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- F) verification that adequate funding exists to support and implement all mitigation and/or compensation activities described in the conservation plan. This may be in the form of bonds, certificates of insurance, escrow accounts or other financial instruments adequate to carry out all aspects of the conservation plan.
- 3) A description of alternative actions the applicant considered that would not result in take, and the reasons that each of those alternatives was not selected. A "no-action" alternative shall be included in this description of alternatives.
- 4) Data and information to indicate that the proposed taking will not reduce the likelihood of the survival of the endangered or threatened species in the wild within the State of Illinois, the biotic community of which the species is a part or the habitat essential to the species existence in Illinois.
- 5) An implementing agreement, which shall include, but not be limited to:
- A) the names and signatures of all participants in the execution of the conservation plan;
 - B) the obligations and responsibilities of each of the identified participants with schedules and deadlines for completion of activities included in the conservation plan and a schedule for preparation of progress reports to be provided to the Department;
 - C) certification that each participant in the execution of the conservation plan has the legal authority to carry out their respective obligations and responsibilities under the conservation plan;
 - D) assurance of compliance with all other federal, State and local regulations pertinent to the proposed action and to execution of the conservation plan; and
 - E) copies of any final federal authorizations for a taking already issued to the applicant, if any.
- b) The Department, after review and public comment, may require additional

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measures as necessary or appropriate to the success of the conservation plan. Requirements for additional measures shall be based on the life history needs of the species involved.

- c) A Habitat Conservation Plan approved by the U.S. Fish and Wildlife Service pursuant to Section 10 of the Endangered Species Act of 1973 [26 USC 1539], and amendments thereto, may be submitted in lieu of the conservation plan described in this Section.
- d) Authorization to take an endangered or threatened species under the terms of a biological opinion issued by the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act of 1973 [26 USC 1536], and amendments thereto, or regulations implementing Section 7 [50 CFR 402] may be submitted in lieu of the conservation plan described in this Section.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1080.20 Notice and Review of Conservation Plans

- a) After receipt of a conservation plan, the Department shall, within 30 days, review the conservation plan to determine if all required information has been provided by the applicant and:
 - 1) acknowledge receipt of the complete conservation plan in writing; or
 - 2) notify the applicant in writing of any deficiencies in the conservation plan and provide the applicant an opportunity to supply additional information to the Department. Any late-breaking or additional information will be considered part of the conservation plan for purposes of this Part.
- b) When the applicant is notified by the Department that the conservation plan is complete as defined in this Part, the applicant shall place a notice in a local newspaper of general circulation in the locality of the proposed action at least once a week for 23 consecutive weeks. At least 744 days shall elapse between the first and last publications of the notice. ~~The notice shall also be published one time in the official State newspaper, concurrent with the first publication in a local newspaper of general circulation.~~ A copy of the notice as it will appear in the newspaper shall be submitted to the Department for approval before the first publication. The notice shall include, at a minimum, the following:

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- 1) the name and mailing address of the applicant;
 - 2) a map or description that clearly shows or describes the precise location and boundaries of both the area to be affected by the proposed project and any areas to be affected by provisions of the conservation plan and is sufficient to enable local residents to readily identify the subject areas. It must include towns, bodies of water, local landmarks, or any other information that would identify the subject areas. If a map is used, it shall indicate the north direction;
 - 3) a summary of the incidental taking for which authorization is being requested;
 - 4) a summary of the measures that will be instituted to minimize, ~~and~~ mitigate and/or compensate for the effects of the proposed incidental taking;
 - 5) the location where a copy of the conservation plan is available for inspection;
 - 6) the street and e-mail address of the office of the Department to which comments on the conservation plan may be submitted; and
 - 7) the closing date for receipt of written comments on the conservation plan.
- c) The applicant shall: ~~1)~~ provide copies of the conservation plan to be available for review at the nearest public library in the county or counties in which the proposed action will occur. Copies distributed for public review shall not include any trade secrets as defined by the Illinois Trade Secrets Act [765 ILCS 1065/2(d)]; ~~and 2) provide copies of the conservation plan to the Executive Director of the Illinois Endangered Species Protection Board (Board).~~
- d) After the applicant's public notice is approved by the Department, the Department shall provide notice of the receipt of the conservation plan to any person who has requested notice. The Department shall maintain a permanent list of those persons or organizations that wish to be notified of all conservation plans it receives.

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(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1080.30 Comments

Written comments on a conservation plan may be submitted to the Department by any person within 30 days after the ~~first~~**last** publication of the notice required by Section 1080.20(b). Comments will be accepted by electronic mail upon confirmation of authorship. The Department shall, upon receipt of written comments, transmit a copy of the comments to the applicant. The applicant shall evaluate the public comments received from the Department and shall submit an analysis of the comments ~~to the Department no later than 10 days after the close of the public comment period.~~ The analysis shall include a list of all persons or organizations making comment; a list of the criticisms, suggestions and comments raised; and the applicant's analysis of each criticism, suggestion or comment. The analysis shall also include a description of any revision to the Conservation Plan that the applicant is making in response to public comment. The comments and the applicant's analysis may be used by the Department pursuant to Section 1080.30 to support any additional measures that may be necessary or appropriate to assure the success of the Conservation Plan.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1080.40 Final Review

- a) The Department's Office of Resource Conservation shall coordinate and perform the review of the conservation plan and issue the incidental take authorization pursuant to this Part. The Department shall complete its review of the conservation plan within 120 days after the first publication of the notice required in Section 1080.20(b) ~~or within 90 days after receipt of the analysis of public comments, whichever is later.~~ After reviewing the conservation plan, the Department may authorize the incidental taking if the Department finds that the taking will meet all of the following requirements:
- 1) the taking will not be the purpose of, but will be only incidental to, the carrying out of an otherwise lawful activity;
 - 2) the parties to the conservation plan will, to the maximum extent practicable, minimize, ~~and~~ mitigate ~~and/or compensate for~~ the impact caused by the taking;
 - 3) the parties to the conservation plan will ensure that adequate funding for

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the conservation plan will be provided as described in Section 1080.10(a)(2)(F);

- 4) based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of the survival of the endangered species or threatened species in the wild within the State of Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois;
 - 5) any additional measures, based upon the life history needs of the species involved, that the Department may require as necessary or appropriate for the purposes of the conservation plan will be performed;
 - 6) the public has received notice of the availability of the conservation plan and has had the opportunity to comment before the Department made any decision regarding the authorization of incidental take; and
 - 7) the Department has sought the advice of the Board and provided written response to any Board comments regarding the issuance of authorization for incidental taking and on the terms of any authorization to be issued.
- b) If the Department finds that the conservation plan does not meet the above requirements, the Department may require that a party to the conservation plan make additional assurances or agree to additional terms and conditions that the Department finds necessary to assure that the requirements in subsections (a)(1) through (a)(6) will be met before authorizing incidental taking. Requirements for inclusion of additional assurances in a conservation plan shall be based on the life history needs of the species involved. The Department shall deny an authorization for incidental taking if the conservation plan does not meet the requirements of subsection (a) and the applicant refuses to accept the additional terms and conditions or refuses to make additional assurances determined necessary by the Department.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1080.50 Notice of Decision

- a) The Department shall provide written notice to the applicant of the approval or denial of authorization for incidental taking. The written notice shall constitute

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the authorization for incidental taking or the denial of the authorization for incidental taking and is effective as of the date of execution by the Director of the Department's Office of Resource Conservation.

- b) The Department shall make available to any person who requests it a copy of any written notice authorizing incidental taking.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1080.65 Standard Measures

- a) The Department may develop standard measures for minimizing, mitigating and/or compensating for the effects of specific types of actions on endangered and threatened species. Notice of the development of the standard measures shall be made through the Department's web page, in Department publications and by publication in the official State newspaper. A period of not less than 30 days after publication in the official State newspaper shall be allowed for the public to comment on proposed standard measures. Upon closure of the defined comment period and consideration of all comments received from the public, the Department may adopt standard measures for minimizing, mitigating and/or compensating for the effects of a specific type of action. Adopted standard measures will be posted on the Department's web page and a copy provided free of charge to any person upon request.
- b) In lieu of providing the information required in Section 1080.10(a)(2)(A) through (a)(2)(E), an applicant for authorization for incidental take of endangered or threatened species may include in his or her conservation plan a commitment to adopt Department-approved standard measures as the means of minimizing, mitigating and/or compensating for the effects of the action on endangered and threatened species. If the Department agrees that the adopted standard measures are adequate to meet the requirements of Section 1080.40, the Department may waive the requirements of Section 1080.20(b) through (d) and Section 1080.30 and issue authorization for the incidental take of endangered or threatened species without public review and comment. The Department shall have the authority to deny any request for the adoption of standard measures for minimizing, mitigating and/or compensating for the effects of an action on endangered and threatened species if the Department finds that adoption of the standard measures does not meet the requirements of Section 1080.40.

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(Source: Added at 34 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Illinois Regenerative Medicine Institute Code
- 2) Code Citation: 77 Ill. Adm. Code 995
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
995.10	New
995.15	New
995.60	New
995.70	New
995.80	New
995.90	New
995.100	New
995.110	New
995.130	New
995.140	New
995.150	New
995.160	New
- 4) Statutory Authority: Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois [20 ILCS 2310] and the Stem Cell Research and Human Cloning Prohibition Act [410 ILCS 110]
- 5) A Complete Description of the Subjects and Issues Involved: Part 995 administers the Stem Cell Research and Human Cloning Prohibition Act [410 ILCS 110], which established the Illinois Regenerative Medicine Institute within the Illinois Department of Public Health to provide for the awarding of grants to Illinois medical research institutions. The Act states that the purposes of the grant programs are: 1) to improve the health of the citizens of Illinois through stem cell research; 2) to support scientific research in Illinois for which funding from the U.S. government might be restricted; 3) to improve the national competitive position of Illinois in the field of regenerative medicine; and 4) to promote the translation of stem cell research into clinical practice and the transfer of technology to biomedical and technological industry. The rules include: definitions; incorporated and referenced materials; types of grant programs; eligibility for grants; conditions on use and disbursement of grant funds; research requirements and limitations; applications; application review process; grant awards; grant agreements; post-grant monitoring and compliance; and suspension, termination and recovery of grant awards.

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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 rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand 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 the publication of this issue of the *Illinois Register* to:

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

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

- 13) Initial Regulatory Flexibility Analysis:

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- A) Types of small businesses, small municipalities and not for profit corporations affected: Nonprofit medical research institutions with their principal place of business located in Illinois.
- B) Reporting, bookkeeping or other procedures required for compliance: Applicants are to submit a letter of intent and a complete application. Grant recipients: 1) must submit written reports of progress toward achieving objectives at six months, one year and within one month after completion; 2) will be subject to periodic on-site inspections by IRMI representatives and oral presentations to clarify the status or the end of project report for the benefit of the peer review panel or other formally recognized audiences; 3) must establish and maintain the necessary processes to monitor their compliance and that of their employees and contractors; take appropriate action to meet the stated objectives; and inform IRMI of any problems or concerns; and 4) are responsible for the actions of their employees and other research collaborators, including third parties involved in the project.
- C) Types of professional skills necessary for compliance: The Act requires the Illinois Regenerative Medicine Institute Oversight Committee [410 ILCS 110] to include individuals from professional medical organizations, voluntary health organizations, and for-profit biomedical or biotechnology industry.

The proposed rules require the Embryonic Stem Cell Research Oversight (ESCRO) committee to include individuals with legal and ethical expertise in developmental biology, stem cell research, molecular biology, assisted reproduction, or ethical and legal issues in embryonic stem cell research.

The proposed rules require the members of the Scientific Review Panel (Panel) (77 Ill. Adm. Code 995) to have:

Demonstrated scientific research and experience in the derivation and use of human embryonic stem cells, human embryonic germ cells or human adult stem cells; or

Demonstrated knowledge and understanding of the ethical and medical implications of the derivation and use of human embryonic stem cells, human embryonic germ cells and human adult stem cells.

- 14) Regulatory Agenda on which this rulemaking was summarized: January 2009

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

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER u: MISCELLANEOUS PROGRAMS AND SERVICESPART 995
ILLINOIS REGENERATIVE MEDICINE INSTITUTE CODE

Section

995.10	Definitions
995.15	Incorporated and Referenced Materials
995.60	Grant Programs
995.70	Eligibility for Grants
995.80	Conditions on Use and Disbursement of Grant Funds
995.90	Research Requirements and Limitations
995.100	Application for Grant
995.110	Application Review Process
995.130	Award of Grants
995.140	Grant Agreements
995.150	Post-Grant Monitoring and Compliance
995.160	Suspension, Termination and Recovery of Grant Awards

AUTHORITY: Implementing and authorized by the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois [20 ILCS 2310] and the Stem Cell Research and Human Cloning Prohibition Act [410 ILCS 110].

SOURCE: Adopted at 34 Ill. Reg._____, effective _____.

Section 995.10 Definitions

"Androgenetic human embryos" means embryos created from a male spermatozoon without genetic contribution from a female.

"Applicant" means an eligible institution that has submitted an application for an award of a grant pursuant to this Part for the purpose of conducting stem cell research in Illinois.

"Biotechnology start-up company" means a new company that makes use of microorganisms to achieve a result.

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"Blastocyst" means a preimplantation embryo of 30-100 cells. The blastocyst consists of a sphere made up of an outer layer of cells (the trophoctoderm), a fluid-filled cavity (the blastocoel), and a cluster of cells on the interior (the inner cell mass).

"Cell division" means a method by which a single cell divides to create two cells. This continuous process allows a population of cells to increase in number or maintain its numbers.

"Chimera" means an organism derived from more than one fertilized cell.

"Department" means the Illinois Department of Public Health.

"Differentiated cell" means a cell in which the level of organization or complexity has developed into a specialized function.

"Embryo" means a fertilized ovum from the time of fertilization until the end of the eighth week of gestation.

"Embryonic stem cell research" means research on embryonic stem cells.

"Embryonic stem cells" means pluripotent stem cells derived from the inner cell mass of a blastocyst that have the potential to become a wide variety of specialized cell types.

"ESCRO committee" means the Embryonic Stem Cell Research Oversight committee that provides ethical and legal oversight at institutions working with human embryonic stem cell lines.

"Experiment" means a test under controlled conditions that is made to demonstrate a known truth, to examine the validity of a hypothesis, or to determine the efficacy of something previously untried.

"FDA" means the United States Food and Drug Administration.

"Gamete" means a sperm or oocyte.

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"Grant" means the award of funds under the Illinois Regenerative Medicine Institute (IRMI) program to an eligible applicant to conduct stem cell research in Illinois.

"Grant agreement" means the agreement entered into between the Department and a grantee setting forth the terms and conditions of a grant award.

"Grantee" means an institution receiving a grant.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the Standards for Privacy of Individually Identified Health Information (Privacy Rule).

"Human embryonic stem cells" means embryonic stem cells derived from a human blastocyst.

"Human subject" means a living individual from whom an investigator, whether professional or student, conducting research obtains data or tissue through either intervention or interaction with the individual, or identifiable private information.

"Illinois Regenerative Medicine Institute" or "IRMI" or the "Institute" means a program of the Department to award research grants.

"Illinois Regenerative Medicine Institute Oversight Committee" or "Committee" means the group that determines the awards of the Institute's grant program, among other duties.

"Institution" means a corporation, association, partnership, nonprofit organization, governmental entity or other legal entity that conducts stem cell research.

"Institutional Animal Care and Use Committee" or "IACUC" means the committee providing oversight at an institution that uses animals as part of federally funded laboratory research.

"Institutional Research Committee" or "IRC" means the committee appointed by an institution to provide continuing oversight of the activities of an IRMI funded project.

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"Institutional Review Board" or "IRB" means any board, committee or other group formally designated by an institution to conduct an initial review of, to approve the initiation of, and to conduct periodic review of all biomedical research involving human subjects.

"Intellectual property" means a creation of the mind that is unique, novel and unobvious, and has commercial value.

"Investigator" means a person conducting or assisting in the performance of stem cell research.

"In vitro" means a process or reaction occurring in an artificial environment such as a test tube or culture medium.

"In vitro fertilization" means a procedure in which fertilization of an egg with a sperm is accomplished outside the living organism.

"Lobbying" means any communication with the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer or State Comptroller, their chiefs of staff, their cabinet members including Directors, Assistant Directors and Chief Legal Counsels or General Counsels, or Members of the General Assembly for the ultimate purpose of influencing executive, legislative or administrative action.

"Medical research" means basic or applied research conducted to aid the body of knowledge in the field of medicine.

"Nonprofit" means an institution exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

"Nonprofit medical research institution" means a corporation, association, partnership, nonprofit organization, governmental entity or other legal entity that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code and conducts basic or applied research to aid the body of knowledge in the field of medicine.

"Parthenogenetic human embryos" means embryos created solely from a female oocyte without genetic contribution from a male.

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"Pluripotent" means the ability of a single stem cell to develop into many different cell types of the body.

"Principal investigator" means the person with primary responsibility for conducting a stem cell research project.

"Progenitor cell" means an early descendant of a stem cell that can differentiate, but cannot renew itself as a stem cell can.

"Project period" means the period in which a research project funded by a grant is to be completed.

"Reproductive cloning" means somatic cell nuclear transfer used for the production of a fetus and delivery of a live offspring that is genetically identical to the donor of the somatic cell DNA.

"Request for applications" or "RFA" means the announcement of the details of the application process for stem cell grants.

"Research donor" means an individual who donates to research any number of blastocysts that remain after clinical care at the time of the original harvesting.

"Scientific Review Panel" or "Panel" means a group of stem cell researchers from outside Illinois, chosen by the Department.

"Somatic cell nuclear transfer" means a technique in which the nucleus of a somatic cell is injected or transferred into an egg that has had its nucleus removed.

"Somatic stem cell", also called adult stem cell, means an undifferentiated cell that can become a specialized cell type of the tissue from which it came.

"Stem cell" means a cell with the ability to divide for indefinite periods in culture and to give rise to specialized cells, and includes, without limitation, somatic stem cells, cord blood stem cells, pluripotent stem cells, totipotent stem cells, progenitor cells, the product of somatic cell nuclear transfer, and any combination of these cells.

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"Stem cell line" means a family of constantly dividing cells, the product of a single parent group of stem cells.

"Stem cell research" means scientific investigation and study into the nature and properties of stem cells, the transformation of stem cells into specialized cells, the development of stem cell lines, the growth of stem cells in vitro, or the possible uses of stem cells to cure or reduce the effects of disease, disabilities or physical conditions or maladies.

"TIN" means the nine-digit federal taxpayer identification number assigned to an institution by the Internal Revenue Service, also known as the federal employer identification number or governmental unit code.

"Totipotent stem cell" means a cell that can give rise to all cell types that are found in an embryo, fetus or developed organism, including the embryonic components of the trophoblast and placenta required to support development and birth. The zygote and the cells at the very early stages following fertilization are considered totipotent.

"Undifferentiated cell" means a cell in which the level of organization or complexity has not yet developed into a specialized function.

Section 995.15 Incorporated and Referenced Materials

- a) The following federal statutes are referenced in this Part:
- 1) Americans With Disabilities Act of 1990 (42 USC 126)
 - 2) Animal Welfare Act (7 USC 2131-56)
 - 3) Davis-Bacon Act (40 USC 276a)
 - 4) Health Insurance Portability and Accountability Act of 1996 (42 USC 1320d-2)
 - 5) Internal Revenue Code (26 USC 501)
 - 6) Occupational Health and Safety Act of 1970 (29 USC 15)

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- b) The following federal regulations are incorporated in this Part:
- 1) Attending Veterinarian and Adequate Veterinarian Care, United States Department of Agriculture (9 CFR 2.33), January 1, 2008
 - 2) Institutional Animal Care and Use Committee (IACUC), United States Department of Agriculture (9 CFR 2.31), January 1, 2008
 - 3) Protection of Human Subjects, United States Department of Health and Human Services (21 CFR 50), April 1, 2008
 - 4) Standards for Privacy of Individually Identified Health Information (Privacy Rule), United States Department of Health and Human Services (45 CFR 160 and 164), October 1, 2007
- c) The following federal guidelines are incorporated in this Part:
- 1) The following guidelines, which are available from the National Academies of Science at The National Academies Press, 500 Fifth Street NW, Lockbox 285, Washington DC 20055 or on-line at:
http://www.nap.edu/catalog.php?record_id=12553
 - A) Guidelines for Human Embryonic Stem Cell Research (2005)
 - B) 2007 Amendments to the Guidelines for Human Embryonic Stem Cell Research
 - C) 2008 Amendments to the Guidelines for Human Embryonic Stem Cell Research
 - 2) Public Health Service Policy on Humane Care and Use of Laboratory Animals (2002), available from the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892
- d) All incorporations by reference of federal regulations and guidelines in this Part refer to the regulations and guidelines on the date specified and do not include any amendments or editions subsequent to the date specified.
- e) The following Illinois statutes and administrative rules are referenced in this Part:

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- 1) Administrative Review Law [735 ILCS 5/Art. III]
- 2) Drug Free Workplace Act [30 ILCS 580]
- 3) Illinois Grant Funds Recovery Act [30 ILCS 705]
- 4) Illinois Human Rights Act [775 ILCS 2]
- 5) Department of Public Health's Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)

Section 995.60 Grant Programs

- a) Grants shall be made from funds appropriated by the General Assembly for the purpose of stem cell research. Unless the General Assembly designates funds for specific types of research or grants, the Committee will award grants including, but not limited to, those for single projects, multiple projects, and projects that support early and conceptual stages of innovative ideas. The Committee may award extensions or continuations to previous grantees in accordance with Section 995.70.
- b) As funds are made available for a specific type of grant, the Institute will solicit applications for those grants by posting a request for applications (RFA) notice of the availability on the Department's web site and by sending notices to Illinois colleges, universities and research institutions. The RFA will include key dates, eligibility, types of grants, amount of grants, amount of permitted indirect cost, a summary of the review process, and the criteria used for the evaluation of the applications as indicated in Section 995.110(d).

Section 995.70 Eligibility for Grants

- a) Applicants shall be nonprofit medical research institutions with their principal place of business located in Illinois.
- b) All research funded by grants shall be conducted in Illinois.
- c) Each applicant involved in human embryonic stem cell research funded by IRMI shall establish an Embryonic Stem Cell Research Oversight (ESCRO) committee,

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in accordance with the Guidelines for Human Embryonic Stem Cell Research. The ESCRO committee shall include representatives of the public and persons with legal and ethical expertise in developmental biology, stem cell research, molecular biology, assisted reproduction, or ethical and legal issues in embryonic stem cell research. The ESCRO committee shall conduct its own review, including, where necessary, management of various other reviews required for a particular protocol. This provision does not preclude the establishment of a joint ESCRO committee that would assume oversight responsibilities for two or more research institutions, provided that the ESCRO committee has oversight authority for each institution consistent with the requirements of this Part.

Section 995.80 Conditions on Use and Disbursement of Grant Funds

- a) The grantee is responsible for assuring that the investigators fulfill the grant requirements and the requirements for the fiscal and legal management of a project that is funded with a grant.
- b) All grants shall be subject to all requirements and limitations imposed by Illinois law, including, without limitation, the Illinois Grant Funds Recovery Act.
- c) Each institution receiving a grant shall establish an IRC to review the institution's activities during the grant period. The IRC shall meet at least quarterly and hear reports from the institution's projects. The IRC shall include scientists, ethicists and community representatives, including organizations supporting medical conditions likely to be investigated by stem cell research.
- d) Project funds shall be used for the direct cost of administering, operating and maintaining a project and for an amount of indirect costs as announced by the Department in its RFA. The direct costs permitted include, but are not limited to:
 - 1) Personal services costs, including gross salaries and employer-paid benefits for full-time and part-time employees on the project;
 - 2) Contractual services costs, including, but not limited to, fees for consultants and specialists, exclusive of consultant services for patient care; conference registration fees; repair and maintenance of furniture and equipment; postage and postal services; subscriptions to periodicals; training and education costs; software; and telecommunications costs;

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- 3) Travel costs, which are the expenses for transportation, lodging and subsistence for personnel who are on travel status on official business related to the IRMI grant. Out-of-state travel requires prior written approval of the Department;
 - 4) Supplies/commodities as required in the operation of the project that are directly related to its operation. Supplies include, but are not limited to, office, medical and educational supplies; equipment items costing less than \$100 each; printing; and paper; and
 - 5) Equipment directly related to the operation of the project. Equipment is defined as items costing over \$100 each, with a useful life of more than one year. Equipment costs shall include all freight and installation costs. Purchase of equipment items, other than those included in the approved budget, requires prior written approval from the Department.
- e) No grant funds shall be used for facility construction or lobbying.
 - f) No grant funds shall be awarded to any person who knowingly purchases or sells embryonic or cadaveric fetal tissue for research purposes. Funds may be used to pay customary medical charges for the removal, processing, disposal, preservation, quality control, storage, transplantation or implantation of the tissue.
 - g) Payments for the purchase of stem cells and stem lines for the purpose of research under this Part shall be limited to payment for removal, processing, disposal, preservation, quality control, storage, transplantation, implantation and legal transaction and other administrative costs associated with these medical procedures and shall specifically include any required payments for medical or scientific technologies, products and processes for royalties, patents, licensing fees and other costs for intellectual property.
 - h) Requests for budget adjustments shall be submitted to the Department in writing no later than 45 calendar days before the end of the grant agreement period.
 - i) No grant funds shall be disbursed for costs incurred more than two years after the start of the project period. Any grant funds not expended or legally obligated by the end of the project period shall be returned to the Department within 45 days after the end of the project period, if the funds are not already on deposit with the

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Department or the State Treasurer. Returned funds shall be deposited into the fund from which the original grant disbursement to the grantee was made.

- j) Grant funds shall not be provided for:
- 1) Research involving the reproductive cloning of a human being;
 - 2) Research involving fetuses from induced abortions; and
 - 3) Research involving the creation of embryos through the combination of gametes solely for the purpose of research.

Section 995.90 Research Requirements and Limitations

All grantees shall comply with the following requirements in the course of performing stem cell research funded by a grant under this Part:

- a) All research shall be undertaken according to the National Academies of Science Guidelines for Human Embryonic Stem Cell Research. The research shall be approved by the ESCRO committee and submitted with the application. Any changes from the National Academies of Science Guidelines for Human Embryonic Stem Cell Research shall be submitted to the Department prior to implementation to assure compliance with this Part and the grant agreement. Any use of human embryonic stem cells shall be consistent with the National Academies of Science Guidelines for Human Embryonic Stem Cell Research.
- b) All research shall at all times comply with all applicable federal laws, including, but not limited to, the Occupational Health and Safety Act and HIPAA, and the following federal regulations: Institutional Animal Care and Use Committee (IACUC) and Attending Veterinarian and Adequate Veterinarian Care. Grantees shall comply with the U.S. Department of Health and Human Services regulations titled Protection of Human Subjects and the U.S. Department of Agriculture regulations titled Attending Veterinarian and Adequate Veterinarian Care and Institutional Animal Care and Use committee (IACUC) (see Section 995.15).
- c) Grantees shall be responsible for supervising their investigators to ensure that they conduct themselves in accordance with the grant agreement and professional standards.

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- d) The project period shall be up to 24 months.
- e) Grantees shall obtain the informed consent of all research donors, patients and participants, including a new consent from individuals who had indicated their intent to donate to research any blastocysts that remain after clinical care at the time of the original harvesting. Donors shall be informed that they retain the right to withdraw consent until the blastocysts are actually used in cell line derivation. A research project's informed consent procedures shall satisfy each of the following requirements:
 - 1) In seeking informed consent, the following information shall be provided to each research donor:
 - A) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental;
 - B) A description of any reasonably foreseeable risks or discomforts to the donor;
 - C) A description of any benefits to the donor or to others that may reasonably be expected from the research;
 - D) A disclosure of appropriate alternative options pertaining to use of the embryos;
 - E) A statement describing the extent, if any, to which confidentiality of records identifying the donor will be maintained;
 - F) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;
 - G) An explanation of whom to contact for answers to pertinent questions about the research and research donors' rights, and whom to contact in the event of a research-related injury to the donor; and

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- H) A statement that participation or donation is voluntary; that refusal to participate and/or donate will involve no penalty or loss of benefits to which the donor is otherwise entitled; and that the donor may discontinue participation at any time without penalty or loss of benefits to which the donor is otherwise entitled.
- 2) When appropriate, the following additional elements of information shall also be provided to each research donor:
 - A) Anticipated circumstances under which the donor's participation in the research may be terminated without the donor's consent;
 - B) The consequences of the donor's decision to withdraw from the research, and procedures for the donor's orderly termination of participation; or
 - C) Significant new findings developed during the course of the research that may relate to the donor's willingness to continue participation.
 - 3) The grantee shall develop the precise form of the informed consent specifically for the particular study protocol or procedure for which the consent is being sought, and the informed consent form shall be approved by the grantee's ESCRO committee.
 - 4) The language in the informed consent shall be clear and understandable.
 - 5) When donor gametes have been used in the in vitro fertilization process, resulting blastocysts shall not be used for research without consent of all gamete donors.
 - 6) The informed consent shall otherwise conform to the requirements for research funded by the National Institutes of Health and be consistent with the Guidelines for Human Embryonic Stem Cell Research published by the National Academies of Science (see Section 995.15).
- f) Financial Incentives Prohibited

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- 1) Financial incentives in the solicitation or donation of blastocysts, gametes or somatic cells for research purposes are prohibited.
 - 2) No cash or in-kind payments shall be provided for donating blastocysts in excess of clinical need for research purposes.
 - 3) No cash or in-kind payments shall be provided for donating oocytes for research purposes.
 - 4) No payments shall be made for donations of sperm for research purposes or of somatic cells for use in nuclear transfer.
- g) Standards of Clinical Care
- 1) Consenting or refusing to donate gametes or blastocysts for research shall not affect or alter in any way the quality of care provided to prospective donors. Clinical staff shall provide care to patients without prejudice regarding their decisions about disposition of their embryos.
 - 2) Researchers shall not ask members of the infertility treatment team to generate more oocytes than necessary for the optimal chance of reproductive success. An infertility clinic or other third party responsible for obtaining consent or collecting materials is not to pay for or be paid for the material obtained (except for specifically defined cost-based reimbursements and payments for professional services).
- h) Privacy and Confidentiality
- 1) Grantees shall at all times ensure that donors' personal health information is protected and kept confidential. Investigators and institutions shall comply with applicable laws, including, but not limited to, HIPAA.
 - 2) Grantees shall ensure that authorizations are received from donors, as required by HIPAA, for the confidential transmission of personal health information to repositories or to investigators who are using embryonic stem cell lines derived from donated materials.
 - 3) When the FDA requires that the identity of the donor source be preserved, investigators and institutions shall ensure that the confidentiality of the

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donor is protected; that the donor understands that the donor's identity will be maintained; and that, where applicable, human subject protections as defined in HIPAA are followed.

- i) Derivation of Stem Cell Lines
 - 1) Requests from the investigators to the ESCRO committee for permission to attempt derivation of new embryonic stem cell lines from donated embryos or blastocysts or from any other source or by another procedure not previously approved by the IRB shall include the IRB's written approval of the procurement process.
 - 2) The investigator shall present the scientific rationale for the need to generate new embryonic stem cell lines, by whatever means, to the ESCRO committee, and the investigators shall justify the basis for the numbers of embryos and blastocysts needed.
 - 3) Blastocysts made using nuclear transfer (whether produced with human or nonhuman oocytes) and parthenogenetic or androgenetic human embryos shall not be transferred to a human or nonhuman uterus and shall not be cultured as intact embryos in vitro.
 - 4) Cells shall not be extracted from blastocysts more than 12 days after cell division begins, not counting any time during which the blastocysts or cells have been stored frozen.
 - 5) Investigators shall document how they will characterize, validate, store and distribute the new embryonic stem cell lines and how they will maintain the confidentiality of any coded or identifiable information associated with the lines.
- j) Storage and Distribution of Stem Cell Lines
 - 1) Cell lines derived or modified in any way with IRMI grant funds shall be deposited in a bank in a timely manner as defined in the grant agreement. Grantees shall allow stem cell lines to be shared with other investigators.
 - 2) Grantees that are banking or plan to bank embryonic stem cell lines shall establish uniform guidelines to ensure that records are maintained about

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all aspects of cell culture, and shall establish uniform tracking systems and common guidelines for distribution of cells.

- 3) Grantees engaged in obtaining and storing embryonic cell lines shall:
 - A) Create a committee for policy and oversight purposes and create clear and standardized protocols for banking and withdrawals.
 - B) Establish documentation requirements for investigators and sites that deposit cell lines, including:
 - i) Providing a copy of the donor consent form;
 - ii) Providing proof of written approval of the procurement process by the depositor's IRB and the grantee's IRB;
 - iii) Providing available medical information on the donors, including results of infectious disease screening;
 - iv) Providing available clinical, observational or diagnostic information about the donors;
 - v) Providing critical information about culture conditions (such as media, cell passage and safety information); and
 - vi) Providing available cell lines characterization (such as karyotype and genetic markers).
 - C) Establish a secure system for protecting the privacy of donors when materials retain information that could lead to the identification of the patient, including, but not limited to:
 - i) A schema for maintaining confidentiality, such as a coding system;
 - ii) A system for a secure audit trail from primary cell lines to those submitted to the repository, which identifies all individuals who have accessed the information; and

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- iii) A policy governing whether and how to deliver clinically significant information to donors.
- D) Establish the following standard practices:
- i) A process for assignment of a unique identifier to each sample;
 - ii) A process for characterizing cell lines;
 - iii) A process for expanding, maintaining and storing cell lines;
 - iv) A system for quality assurance and control;
 - v) A website that contains specific descriptions and data related to the cell lines available;
 - vi) A procedure for reviewing applications for cell lines;
 - vii) A process for tracking disbursed cell lines and recording their status when shipped, including number of times the stem cell line has been subcultured or transferred;
 - viii) A system for auditing compliance;
 - ix) A schedule of charges;
 - x) A statement of intellectual property policies;
 - xi) A process to create a material transfer agreement or user agreement;
 - xii) A liability statement; and
 - xiii) A system for disposal of material.
- E) Establish clear criteria for distribution of cell lines, including, but not limited to, written approval of the research by the ESCRO committee or equivalent body at the recipient institution.

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- k) Research Use of Stem Cell Lines
- 1) Once stem cell lines have been derived, investigators and grantees shall monitor their use in research.
 - 2) Grantees shall require documentation of the source of all stem cell lines, including whether the cells were imported into the institution or generated locally. The investigator's notice to the institution shall include evidence of written IRB approval of the procurement process, and adherence to Guidelines for Human Embryonic Stem Cell Research. In the case of lines imported from another institution, documentation that these criteria were met at the times of derivation will suffice.
 - 3) Each grantee shall maintain a registry of its investigators who are conducting stem cell research.
 - 4) The investigators shall submit all protocols involving the combination of embryonic stem cells with nonhuman embryos, fetuses or adult animals to the ESCRO committee for consideration of the consequences of the human contributions to the resulting chimeras.
 - 5) The ESCRO committee shall review experiments in which embryonic stem cells, their derivatives or other pluripotent cells are introduced into nonhuman fetuses and allowed to develop into adult chimeras, including consideration of any major functional contributions to the brain.
 - 6) The IRB shall review use of existing stem cells when the research involves introduction of the stem cells or their derivatives into patients or the possibility that the identity of the donors of the blastocysts, gametes or somatic cells is readily ascertainable or might become known to the investigator. Documentation of the IRB's review shall be included with the grant application (see Section 995.100(c)(17)).
- l) Research involving nonhuman mammals
- 1) Standards for the review of research involving nonhuman mammals shall be based on the requirements of the Animal Welfare Act and the Public Health Service Policy on Humane Care and Use of Laboratory Animals

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(see Section 995.15). All research involving nonhuman animals shall be approved by the institution's IACUC.

- 2) Introduction of embryonic stem cells into nonhuman mammalian blastocysts shall be considered by investigators and approved by the ESCRO committee only under circumstances in which no other experiment can provide the information needed.
- 3) Animal embryonic stem cells shall not be transplanted into a human blastocyst.
- 4) Human embryonic stem cells shall not be transplanted into nonhuman primates.

Section 995.100 Application for Grant

- a) The Department shall provide written application instructions and forms to potential applicants.
- b) The Department will request a letter of intent from prospective applicants approximately one month before applications are due. A letter of intent is not binding on the prospective applicant. A letter of intent shall include the descriptive title of the proposed research; the name, address and telephone number of the principal investigator; the names of other key personnel; the names of participating institutions; and, if applicable, the type of grant for which the application is being submitted.
- c) All applications shall include the following:
 - 1) The name, address and telephone, FAX and teletypewriter (TTY) numbers, if available, of the institution applying for the grant.
 - 2) The principal investigator's name, address and telephone, FAX and TTY numbers, if available.
 - 3) The curriculum vitae of the principal investigator or principal investigators.

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- 4) A one-page nontechnical abstract that describes the significance of the applicant's project for stem cell research.
- 5) The applicant's TIN or the Governmental Unit Code assigned by the Illinois Comptroller.
- 6) The signature of the principal investigator and agency official authorized to certify the application.
- 7) An approximate timetable for project expenditures and completion.
- 8) Background data and information justifying the project.
- 9) A detailed budget for the project period, documenting sufficient resources to carry out the project. The budget shall be by line item category and shall provide sufficient detail to justify the use of grant funds to support project activities. The applicant shall indicate the total cost of conducting the project; the anticipated funding request for each year of the project period; the source of other funds in hand supporting the research project; other grants or funds awarded, denied or pending; and the amount of support requested from the Department.
- 10) A Statement of Assurances, signed by a responsible official, indicating compliance with applicable State and federal requirements.
- 11) A statement of the type of grant being requested (see Section 995.60(a)).
- 12) A statement of the research question or hypothesis or a description of interventions or model programs on which the research will be based.
- 13) A prioritized listing of measurable objectives for the project period.
- 14) Proposed activities for experiments, scientific rationale and relevant reference to existing works.
- 15) The evaluation methods to be used to measure progress in achieving objectives and a plan for monitoring the overall project.

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- 16) A sample informed consent document (with patient identifier information removed) and a description of the informed consent process that meets the criteria for informed consent set forth in this Part (see Section 995.90(e)).
- 17) The written guidelines under which the research will proceed and documentation of approval from the IRB, and, if the grant activities require, from the ESCRO committee and IACUC.

Section 995.110 Application Review Process

- a) At the end of an application period, the Department will conduct a screening review to confirm that each application is complete. The screening review will confirm that:
 - 1) All required questions in the application have been answered;
 - 2) All required forms and materials have been submitted;
 - 3) All ethical and legal guidelines applicable to the research project have received appropriate approvals, including any required approvals by the institution's IRB, ESCRO committee or IACUC, or that the appropriate approvals have been applied for and are pending. No monies shall be spent on an activity without appropriate approvals;
 - 4) The description of the research project and its objectives, protocols and ethical and legal guidelines is clear and concise. Applications that exceed the maximum length permitted in the written instructions for applicants shall be returned without consideration; and
 - 5) All of the necessary parties have signed the application.
- b) The Scientific Review Panel will have 10 to 20 members appointed by the Director to serve a term of two years. If a vacancy occurs, the Director will appoint a replacement to serve the remainder of the term. Panel members will:
 - 1) Not be residents of Illinois;
 - 2) Not be employed by a medical research institution with its principal place of business in Illinois;

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- 3) Not be members of the Committee; and
 - 4) Have demonstrated at least one of the following:
 - A) Scientific research and experience in the derivation and use of human embryonic stem cells, human embryonic germ cells or human adult stem cells;
 - B) Knowledge and understanding of the ethical and medical implications of the derivation and use of human embryonic stem cells, human embryonic germ cells and human adult stem cells.
- c) The Panel will:
- 1) Establish guidelines for scoring applications, which shall adhere to the National Academies of Science Guidelines for Human Embryonic Stem Cell Research, 2007 Amendments to the National Academies of Science Guidelines for Human Embryonic Stem Cell Research, and 2008 Amendments to the National Academies of Science Guidelines for Human Embryonic Stem Cell Research.
 - 2) Review complete applications submitted by eligible institutions and make recommendations to the Committee with respect to the scientific and ethical merit of the applications reviewed.
 - 3) Review progress and final reports prepared by awardees as required in grant agreements with the Department.
- d) Two members of the Panel will review and evaluate each complete application and present their evaluations to the entire Panel. The Panel will review and study the application, rate the scientific and technical merit of the application, and propose terms for the grant agreement. The Panel will review and rank the quality of the research project under the following criteria:
- 1) The activities identified by the applicant will lead to achievement of the research objectives;
 - 2) The project objectives are achievable in the stated time frame;

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- 3) The evaluation methods measure progress toward the identified objectives;
- 4) The budget provides sufficient resources that include, but are not limited to, staff, equipment and supplies, and justifies the need for funds to carry out the project;
- 5) The investigators, especially the principal investigator, have a history of conducting and completing scientific research on time, on budget and as planned;
- 6) The investigators, especially the principal investigator, have significant expertise in biotechnology and have a reputation for innovation and for developing practical applications for biotechnology;
- 7) The applicant has the facilities and resources to complete the research project as described;
- 8) The research leads to or involves clinical trials;
- 9) The stem cell research project has the greatest potential, based on the information presented in the application and the Panel's knowledge and experience, for therapies and cures and cannot receive or is unlikely to receive sufficient federal funding;
- 10) The research is likely to lead to new therapies, treatment or cures for debilitating diseases and injuries, based on the information presented in the application and the Panel's knowledge and experience;
- 11) The research will lead to patents, articles in peer-reviewed journals or additional grant funding;
- 12) The research proposes projects of established researchers to undertake stem cell research, of junior investigators to develop stem cell research projects, or of researchers in human embryonic stem cells;
- 13) The research project will develop or refine the understanding of the ethical, legal and social issues raised by stem cell research;

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- 14) The project proposes novel ideas and approaches to develop the ideas;
 - 15) The project proposes human embryonic stem cell research that may attract venture capital for biotechnology start-up companies in Illinois;
 - 16) The research that is likely to accelerate the pace at which basic and preclinical findings are translated into clinical benefits;
 - 17) The project proposes collaborative and interdisciplinary research among investigators, whether at the same or different institutions; and
 - 18) Funding the project will increase awareness and understanding of stem cell research.
- e) The Panel will prepare a report for the Committee, setting forth its analyses, impressions and recommendations on the application, the rank order of the projects and the amount of the grant recommended, if any. The Panel may approve part of an application and recommend partial funding (see Section 995.130).
- f) After the Panel ranks the approved applications in order and submits the list to the Committee, the Committee will decide which applications to fund based on the reviewers' recommendations and the criteria listed in this Section. If the amount of recommended funding exceeds the total amount for awards, the Committee may approve reduced funding for one or more applicants. Those applicants offered reduced funding may decline; if they accept, they shall submit a revised budget for the reduced amount within 10 days after acceptance.

Section 995.130 Award of Grants

- a) The Committee may award all of the requested funds to the applicants that are selected for funding, or may award reduced funding for one or more applicants. The Committee's decision will include, but not be limited to, the following:
- 1) The total amount of grant funds available;
 - 2) The number of grant proposals selected for funding;

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- 3) Whether a selected project contains elements that the Committee determines, based on the review process in Section 995.110, should not be funded or should be partially funded; and
 - 4) Whether the requested funding exceeds the described activities of the project, based on the review process in Section 995.110.
- b) If the Committee determines that the number of selected projects must be reduced to accommodate the amount of grants funds available, the criteria in Section 995.110 will be used to reduce the number of projects.
 - c) The Department will prepare award transmittal letters and a grant agreement for approved projects. Mailing of the transmittal letter and grant agreement to the applicant for acceptance shall constitute notification of award.
 - d) The Department will notify in writing those applicants whose research projects are not accepted for IRMI funding.

Section 995.140 Grant Agreements

- a) No award to an applicant shall be final until the applicant and the Department have executed and delivered a grant agreement setting forth the terms and conditions of the grant, including the requirements set forth in this Section. The Department will retract the award of a grant if an agreement cannot be reached on the terms of the grant agreement.
- b) The grant and the grant agreement shall not be sold, assigned or transferred in any manner. Any actual or attempted sale, assignment or transfer shall render the grant agreement null, void and of no further effect. If the grantee, for whatever reason, ceases operation, the grant agreement shall be terminated.
- c) All projects shall begin and end on the date specified in the grant agreement. The project period shall be for 24 months. Requests for a no-cost extension shall be submitted to the Committee no later than 45 calendar days before the end of the project period.
- d) Pursuant to the Grant Funds Recovery Act, the grant agreement shall contain the following terms:

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- 1) The grant agreement shall describe the purpose of the grant and be signed by the Department and all grantees;
- 2) The grant agreement shall specify how payments will be made, what constitutes permissible expenditure of the grant funds, and the financial controls applicable to the grant;
- 3) The grant agreement shall specify the project period; and
- 4) The grant agreement shall contain a provision that all grant funds remaining at the end of the project period shall be returned to the State within 45 days.

Section 995.150 Post-Grant Monitoring and Compliance

- a) The Department will monitor all grants awarded.
- b) Grantees shall submit written reports of progress toward achieving objectives at:
 - 1) Six months into the grant agreement period;
 - 2) One year into the grant agreement period; and
 - 3) Within a month after the conclusion of the project period.
- c) The reports shall include the following:
 - 1) A description of the current status of the project in accordance with the proposed time frames in the application;
 - 2) Documentation on the progress in meeting each project objective in accordance with the proposed time frames in the application;
 - 3) Rationale for any revisions in the evaluation methods or the monitoring plan;
 - 4) A comparison of actual expenses to the budget projections and time frames in the application;

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- 5) A projection of methods and time frames involved to accomplish the pending objectives within the time frame remaining (except for the end of the project summary report); and
- 6) A summary at the close of the project period of the achievements and ultimate conclusions derived as a result of the project.
- d) The Department and one or more members of the Panel will review reports submitted by grantees.
- e) Grantees shall be subject to periodic on-site inspections by IRMI representatives.
- f) IRMI may request an oral presentation to clarify the status or the end of project report for the benefit of the peer review panel or other formally recognized audiences.
- g) Grantees shall establish and maintain the necessary processes to monitor their compliance and that of their employees and contractors; take appropriate action to meet the stated objectives; and inform IRMI of any problems or concerns.
- h) Grantees are responsible for the actions of their employees and other research collaborators, including third parties involved in the project.

Section 995.160 Suspension, Termination and Recovery of Grant Awards

- a) If a grantee fails to comply with this Part or the terms of the grant agreement, the Department, after notice and opportunity for hearing, shall suspend or revoke the grant or recover any grant funds previously disbursed to the grantee.
- b) Hearings will be conducted in accordance with the Department's Rules of Practice and Procedure in Administrative Hearings.
- c) Pursuant to the Grant Funds Recovery Act, any grant funds that are misspent or are being improperly held may be recovered by the Department, after notice and opportunity for hearing, or alternatively by the Illinois Attorney General (see Section 995.80).
- d) If the Department believes that a grant should be suspended, terminated or recovered due to a grantee's failure to comply with this Part or the terms of the

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grant agreement, the grantee shall have the opportunity for at least one informal hearing before the Department or the Department's designee to determine the facts and issues and to resolve any conflicts as amicably as possible before any formal recovery action is taken.

- e) If, based on the outcome of the informal hearing, the Department believes that a grant should be suspended, terminated or recovered due to a grantee's failure to comply with this Part or the terms of the grant agreement, then written notice of the proposed action shall be given to the grantee identifying the action to be taken and specific facts that permit the action. The grantee shall have 35 days after the receipt of the notice to request a hearing to show why recovery is not justified or proper.
- f) If a grantee requests a hearing pursuant to subsection (d) of this Section, then:
 - 1) The Department shall hold a hearing at which the grantee (or the grantee's representative) is permitted to present evidence and witnesses to show why the action should not be taken; and
 - 2) After the conclusion of the hearing, the Department shall issue a written final order setting forth its findings of fact and decision. A copy of the order shall be sent to the grantee.
- g) A grantee may seek judicial review of any final order pursuant to the provisions of the Administrative Review Law.
- h) The Department may suspend payment of grants at any time. If a grantee requests a hearing pursuant to subsection (d), the Department may not take any action of recovery until at least 35 days after the Department has issued a final recovery order pursuant to subsection (e). If a grantee does not request a hearing as permitted in subsection (d), the Department may proceed with recovery of the grant funds identified in the notice at any time after the expiration of the 35-day request period established in subsection (e).
- i) Any notice or mailing required or permitted by this Part shall be deemed received five days after the notice or mailing is deposited in the United States mail, properly addressed with the grantee's current business address and with sufficient U.S. postage affixed.

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- 1) Heading of the Part: School Construction Program
- 2) Code Citation: 23 Ill. Adm. Code 151
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
151.20	Amendment
151.50	Amendment
151.100	Amendment
151.110	Amendment
151.120	Amendment
151.200	New Section
151.210	New Section
151.220	New Section
151.230	New Section
151.235	New Section
151.240	New Section
- 4) Statutory Authority: 105 ILCS 230/5-55
- 5) A Complete Description of the Subjects and Issues Involved: PA 96-37, effective August 25, 2009, adds Section 5-200 to the School Construction Law to establish a grant program for energy efficiency purposes. Under the law, School Energy Efficiency grants are limited to \$250,000 per grant each fiscal year, although a school district may receive more than one grant a year. Of the amount appropriated for the grant program, 20 percent must be awarded to City of Chicago School District 299. In order to receive a grant, a school district must provide a local match in an amount equal to the amount of the grant received. This match can be from local funds or eligible federal or other funds.

As of this time, no money has been appropriated for the grant program; however, it is anticipated that funding could become available before the end of the school year. For this reason, it is proposed that new Subpart C be added to Part 151 (School Construction Program) to set forth the process for requesting grant funds, eligibility requirements for energy efficiency projects, restrictions on the use of the funds, and the manner in which districts will account for the grant funds received. Moving forward with the rulemaking now will enable requirements to be in place, should grant money become available, by March or April when school districts typically begin their bidding process for summer projects.

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The statutory requirements for the School Energy Efficiency Project Grants are nearly identical to those for the School Maintenance Project Grants; therefore the applicable requirements from Subpart B are being repeated in Subpart C. These requirements are familiar to school districts and other eligible applicants. In particular, energy efficiency grant applications will be funded in the same manner as school maintenance grants in years in which the appropriation is insufficient to fund all approvable applications (see Section 151.230). Agency staff also will be shifting to an electronic application process, and that change is reflected in the proposal for both school maintenance and energy efficiency project grants.

In defining allowable energy efficiency projects in Section 151.210, agency staff consulted Section 19b-1.1 of the School Code, which addresses School Energy Conservation and Saving Measures. A list of the types of projects that could be conducted under the energy efficient program is included as an example for applicants, but is not meant to be exhaustive.

Other changes in Part 151 result from the enactment of PA 96-731, effective August 25, 2009. This law limits eligibility for school construction and school maintenance grants to only school districts, Type 40 area vocational centers, and cooperative high schools. Corresponding changes have been made in Sections 151.20 and 151.100. (Type 40 area vocational centers are career centers that are designated by the agency and are jointly owned and operated by member school districts. Currently, there are 13 such centers in operation.)

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking 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 will not create or enlarge a State mandate.

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- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days after the publication of this Notice to:

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

(217) 782-5270

Comments may also be submitted electronically, addressed to:

rules@isbe.net

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: The proposed changes respond to recently enacted legislation; therefore notice of the proposed changes did not appear in either of the last two regulatory agendas.

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER c: FINANCE

PART 151
SCHOOL CONSTRUCTION PROGRAM
SUBPART A: SCHOOL CONSTRUCTION PROJECT GRANTS

Section	
151.10	Purpose
151.20	Eligible Applicants
151.30	Application for School Construction Project Grant Entitlement
151.35	Application for School Construction Project Grant Entitlement – Districts With A Population Exceeding 500,000
151.40	Award of Construction Project Grant Entitlement
151.50	Priority Ranking of Construction Grant Entitlements
151.55	Needed Capacity for Unit Districts
151.60	Grant Index
151.70	Debt Service Grants (Repealed)

SUBPART B: SCHOOL MAINTENANCE PROJECT GRANTS

Section	
151.100	Purpose; Eligible Applicants
151.110	Definitions
151.120	Application for School Maintenance Project Grants
151.130	Award of School Maintenance Project Grants – Applicants With a Population of 500,000 or Fewer
151.135	Award of School Maintenance Project Grants – School Districts With a Population Exceeding 500,000
151.140	Terms of the Grant

SUBPART C: SCHOOL ENERGY EFFICIENCY PROJECT GRANTS

<u>Section</u>	
<u>151.200</u>	<u>Purpose; Eligible Applicants</u>
<u>151.210</u>	<u>Definitions</u>
<u>151.220</u>	<u>Application for School Energy Efficiency Project Grants</u>

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- [151.230](#) [Award of School Energy Efficiency Project Grants – Applicants with a Population of 500,000 or Fewer](#)
- [151.235](#) [Award of School Energy Efficiency Project Grants – School Districts with a Population Exceeding 500,000](#)
- [151.240](#) [Terms of the Grant](#)

AUTHORITY: Implementing the School Construction Law [105 ILCS 230] and authorized by Section 5-55 of that Law.

SOURCE: Emergency rules adopted at 22 Ill. Reg. 2616, effective January 16, 1998, for a maximum of 150 days; emergency rules modified in response to JCAR objection at 22 Ill. Reg. 4500; emergency rules expired June 15, 1998; emergency rules adopted at 22 Ill. Reg. 6238, effective March 24, 1998, for a maximum of 150 days; emergency rules modified in response to JCAR objection at 22 Ill. Reg. 7703; emergency expired June 15, 1998; new Part adopted at 22 Ill. Reg. 12538, effective July 6, 1998; emergency amendment at 23 Ill. Reg. 11336, effective September 1, 1999, for a maximum of 150 days; amended at 24 Ill. Reg. 497, effective January 3, 2000; amended at 24 Ill. Reg. 5661, effective March 17, 2000; amended at 26 Ill. Reg. 886, effective January 15, 2002; amended at 32 Ill. Reg. 7410, effective April 22, 2008; amended at 33 Ill. Reg. 7919, effective June 1, 2009; amended at 34 Ill. Reg. _____, effective _____.

SUBPART A: SCHOOL CONSTRUCTION PROJECT GRANTS

Section 151.20 Eligible Applicants

School districts, [cooperative high schools and Type 40 area vocational centers](#) that meet the requirements of the School Construction Law and this Subpart are eligible to apply for school construction project grant entitlements. A district's, [high school's or center's](#) eligibility for a school construction project grant under the minimum enrollment requirements of Section 5-25(a) of the School Construction Law shall be determined using the district's, [high school's or center's](#) enrollment in prekindergarten through grade 12 as of the last school day in September of the most recent school year. [For purposes of this Subpart A, the term "district" shall be understood to include each of these eligible entities.](#)

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 151.50 Priority Ranking of Construction Grant Entitlements

Priority ranking of construction grant entitlements shall be done if the appropriation for any

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fiscal year is insufficient to fund grants for all approved grant entitlements. In this case, districts holding construction grant entitlements shall be eligible for construction grants to be awarded by the Capital Development Board in order of the priority ranking described in this Section.

- a) Districts holding grant entitlements shall be eligible for grant awards in the order of:
 - 1) the six levels of priority described in Section 5-30 of the School Construction Law; and
 - 2) the district's ranking within its level of priority, determined according to subsections (b) through (d) of this Section.
- b) A district's ranking within a level of priority shall be determined by multiplying the district's needed capacity as determined under subsection (c) of this Section by the ratio of the district's needed capacity to the district's enrollment as of the last school day in September of the most recent school year. The resulting figure shall constitute the district's ranking, with the largest figure having the highest ranking.
- c) Needed Capacity
 - 1) For each priority other than priority five, the district's needed capacity shall be calculated by subtracting its currently available capacity as determined under subsection (d) of this Section from its current enrollment or its projected enrollment, whichever is greater.
 - A) Projected enrollment shall be calculated by multiplying the district's current enrollment by the ratio of the district's current enrollment to the district's enrollment two years before.
 - B) For purposes of calculating needed capacity, projected enrollment shall not include any increase in enrollment attributable to a change in the district's boundaries.
 - 2) For priority five, the district's needed capacity shall be the number of qualified individuals with disabilities who require a school construction project.
- d) Determination of Available Capacity

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- 1) The enrollment capacity of each room or space currently subject to occupancy by students for instructional purposes in a district-owned, permanent building, or in a building leased by the district if the lease is at least ten years from expiration, shall be determined by dividing the net floor area (in square feet) of [thesueh](#) room or space by the appropriate loading factor, as follows:

Type of Room or Space	Loading Factor
Prekindergarten Classroom	40
Kindergarten Classroom	40
Elementary General Classroom	35
Elementary Art Classroom	40
Elementary Music Classroom	30
Elementary Computer Classroom	35
Middle School General Classroom	35
Middle School Art Classroom	40
Middle School Family and Consumer Sciences Classroom	50
Middle School Music Classroom	25
Middle School Computer Classroom	40
Middle School Science Laboratory	40
Middle School Science Laboratory/Classroom	50
Middle School Industrial Technology Laboratory/Shop Not Classified Elsewhere	40
High School General Classroom	30
High School Art Classroom	35
High School Music Classroom	25
High School Computer Classroom	40
High School Family and Consumer Sciences Classroom	60
High School Science Laboratory	35
High School Industrial Technology Laboratory/Shop	75
High School Laboratory Not Classified Elsewhere	35
Special Education Classroom	50

- 2) Buildings and additions with a functional age over one hundred years old shall be assigned an enrollment capacity of zero. The functional age of a building and each of its additions shall be individually determined by

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multiplying its actual age by one of the following condition factors, to be determined using the Building Condition Evaluation Form supplied by the State Board of Education:

Condition of Building or Addition	Condition Factor
Excellent	0.2
Satisfactory	0.4
Substandard	1.0
Poor	1.5
Very Poor	2.0

3) As used in this subsection (d), "permanent building" means a building mounted on a slab or a permanent foundation. A permanent foundation is a closed-perimeter formation consisting of materials such as concrete, mortared concrete block, or mortared brick extending into the ground below the frost line which may include but not be limited to cellars, basements, or crawlspaces but does not include the sole use of piers.

4) Available capacity shall be calculated by multiplying enrollment capacity as determined in subsections (d)(1) through (d)(3) of this Section by the following utilization factors:

A) elementary schools	0.9
B) middle or junior high schools	0.85
C) high schools	0.8

e) A new order of priority ranking shall be established among the applicants for each fiscal year. If a district is not awarded a construction grant in a fiscal year for which it has received an entitlement, the district must update its application to establish its priority ranking for the following fiscal year.

f) *Type 40 area vocational centers shall be placed last on the priority listing of eligible entities for the applicable fiscal year. [105 ILCS 230/5-25]*

(Source: Amended at 34 Ill. Reg. _____, effective _____)

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SUBPART B: SCHOOL MAINTENANCE PROJECT GRANTS

Section 151.100 Purpose; Eligible Applicants

- a) This Subpart implements the School Construction Law [105 ILCS 230], which requires that the State Board of Education issue grants for school maintenance projects.
- b) Any school district, [cooperative high school or Type 40 area vocational center](#)~~charter school, public university laboratory school approved by the State Board of Education pursuant to Section 18-8.05(K) of the School Code [105 ILCS 5/18-8.05(K)], or area vocational center~~ may apply for a grant. An eligible applicant may apply for and receive more than one grant during a fiscal year. [For purposes of this Subpart B, the term "district" shall be understood to include each of these eligible entities.](#)

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 151.110 Definitions

As used in this Subpart:

"Emergency project" means a project made necessary by a disaster described in Section 5-30(1) of the School Construction Law. Conditions caused by age or lack of timely maintenance shall not constitute an emergency. Costs of an emergency project that are covered by insurance may not be claimed as part of an emergency project.

"Grant" means a school maintenance project grant.

"Health/life safety project" means a project that is necessary to correct a violation of the Health/Life Safety Code for Public Schools (23 Ill. Adm. Code 180) or to provide handicapped accessibility or school security.

"Ongoing operational costs" means ordinary maintenance expenses incurred in the course of the applicant's operations, including expenses for employee salaries and benefits, materials, and supplies.

"Other project" means a project other than an emergency project, health/life safety

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project, State program priority project or permanent improvement project.

"Permanent improvement project" means a project designed to upgrade or install building systems (e.g., air conditioning, electrical or plumbing systems) or involving other improvements to a building or structure so that the building or structure is better adapted to the applicant's educational programs.

"School maintenance project" or "project" means *a project, other than a school construction project as defined in Section 5-5 of the School Construction Law or a school energy efficiency project as defined in Section 5-200 of the School Construction Law [105 ILCS 230/5-5 or 5-200], intended to provide for the maintenance or upkeep of buildings or structures for educational purposes, but does not include ongoing operational costs [105 ILCS 230/5-5].* A project may involve different types of work on a single building or structure, or may involve a single type of work (e.g., new roofing or windows) on several buildings or structures. ~~Work on a project must have started on or after May 1, prior to the fiscal year for which a grant is sought.~~ There is no limit to the cost of a project; however, grant awards shall not exceed \$50,000 per project, and applicants shall provide a match from local funds equal to the grant amount requested.

"State program priority project" means a project that is necessary for energy conservation or that adapts a building or structure to better serve students in a specific program for which the applicant receives funding under the School Code (e.g., ~~preschool education~~~~prekindergarten at-risk~~, school technology).

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 151.120 Application for School Maintenance Project Grants

a) An eligible applicant may apply for a grant by submitting an application electronically in a format prescribed~~on a form provided~~ by the State ~~Superintendent~~Board of Education. A separate application shall be submitted for each project for which the applicant seeks a grant award.

b) ~~Up to \$1 million shall be reserved each fiscal year for emergency projects. If funds, other than funds reserved for emergency projects, remain after the award of grants from the announced application cycle, a second application period will be held. If funds reserved for emergency grants remain at the end of the fiscal year, these funds shall be distributed for other approved projects from the latest application cycle.~~

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~~e) An application for a grant for an emergency project shall be submitted directly to the State Board of Education by the deadline stipulated on the application. A copy shall also be sent to the regional superintendent of education. Emergency applications shall be submitted to the following address:~~

~~Illinois State Board of Education
School Maintenance Project Program
100 North First Street
Springfield, Illinois 62777-0001~~

~~a)d) Except as provided under subsection (e) of this Section, an application~~All other applications shall be submitted electronically to the regional office of education at least two weeks prior to the application deadline announced by the State Superintendent~~Board of Education~~ for the fiscal year for which the grant is sought. The regional superintendent shall review and electronically forward the application~~applications~~ to the State Superintendent~~Board of Education at the address stipulated in subsection (c) of this Section~~ by the application deadline.

~~e) An application that is incomplete shall be returned and shall not be processed until it is complete. An application must be complete by the applicable submission deadline in order to be considered. All information contained in the application shall be subject to verification and correction by the State Board of Education by such means as on-site inspection and review of documents.~~

~~b)f) Each application shall include the following information:~~

- ~~1) The names, addresses, and descriptions of the facilities included in the project.~~
- ~~2) A narrative description of the nature and scope of the project, including the starting and completion dates for the project.~~
- ~~3) The total cost of the project, amount and source of local matching funds (using the revenue and account codes set forth at 23 Ill. Adm. Code 100 (Requirements for Accounting, Budgeting, Financial Reporting, and Auditing)), and the requested grant amount.~~
- ~~4) The priority category of the project (see Section 151.130(b)(2) of this~~

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Part).

- A) For an emergency project, the applicant shall indicate the date and nature of the emergency and the extent of building damage.
- B) For a health/life safety project necessary to correct a code violation, the applicant shall identify the health/life safety work by amendment number.

5) For applicants that are seeking more than one grant in a fiscal year, the order in which the applicant wants its projects funded.

6) Such assurances as the State [Superintendent Board of Education](#) may require, to include at least the following:

- A) that the local board of education, in the case of school districts, or other school governing authority authorized the school maintenance project during a duly convened meeting, and
- B) that the local board of education, in the case of school districts, or other school governing authority reserved local funds in an amount equal to the school maintenance project grant requested to meet the local match requirement.

~~c)g)~~ [Submission of the electronic application shall be evidence of authorization by the school board or other governing board. Each application shall bear an original signature of the president of the local board of education or other school governing authority.](#)

[d\) An applicant submitting an incomplete application shall be contacted by staff of the State Board regarding the need for additional information. An application must be complete by the applicable submission deadline in order to be considered. All information contained in the application shall be subject to verification and correction by the State Superintendent by such means as on-site inspection and review of documents.](#)

[e\) An application for a grant for an emergency project shall be submitted electronically directly to the State Superintendent by the deadline stipulated on](#)

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the application. A copy shall also be submitted to the regional superintendent of education.

- f) Up to \$1 million shall be reserved each fiscal year for emergency projects. If funds, other than funds reserved for emergency projects, remain after the award of grants from the announced application cycle, then a second application period will be held. If funds reserved for emergency grants remain at the end of the fiscal year, then these funds shall be distributed for other approved projects from the latest application cycle.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

SUBPART C: SCHOOL ENERGY EFFICIENCY PROJECT GRANTSSection 151.200 Purpose; Eligible Applicants

- a) This Subpart implements Section 5-200 of the School Construction Law [105 ILCS 230/5-200], which requires that the State Board of Education issue grants for school energy efficiency projects.
- b) Any school district, charter school, public university laboratory school approved by the State Board of Education pursuant to Section 18-8.05(K) of the School Code [105 ILCS 5/18-8.05(K)], or area vocational center may apply for a grant. An eligible applicant may apply for and receive more than one grant during a fiscal year. Applicants not awarded funding in a fiscal year may reapply in a subsequent fiscal year, provided the proposed work has not been started or completed.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 151.210 Definitions

As used in this Subpart:

"Energy efficiency project" means any improvement, repair, alteration, or betterment of any building or facility owned or operated by an eligible applicant as set forth in Section 151.220 of this Part, or any equipment, fixture, or furnishing to be added to or used in any building or facility, subject to the building code authorized in Section 2-3.12 of the School Code [105 ILCS 5/2-

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3.12] (see 23 Ill. Adm. Code 180), that is designed to reduce energy consumption and may include, without limitation, one or more of the following:

Insulation of the building structure or systems within the building;

Storm windows or doors, caulking or weather stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

Automated or computerized energy control systems;

Heating, ventilating, air conditioning, or HVAC system repairs or replacements (this does not include initial installations);

Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable building code for the lighting system after the proposed modifications are made;

Energy recovery systems;

Energy conservation measures that provide long-term cost reductions;

Alternative energy systems, including but not limited to wind power or solar power systems; and

Other projects designed to reduce the consumption or use of energy.

An energy efficiency project may involve different types of work on a single building or structure, or may involve a single type of work (e.g., new roofing or windows) on several buildings or structures. There is no limit to the cost of a project; however, grant awards shall not exceed \$250,000 per project per fiscal year, and applicants shall provide a match from local funds and/or eligible federal or other funds equal to the grant amount requested (see Section 5-200(a) of the School Construction Law).

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"Grant" means a school energy efficiency project grant.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 151.220 Application for School Energy Efficiency Project Grants

- a) An eligible applicant may apply for a grant by submitting an application electronically in a format prescribed by the State Superintendent. A separate application shall be submitted for each project for which the applicant seeks a grant award.
- b) An application shall first be submitted electronically to the regional office of education at least two weeks prior to the application deadline announced by the State Superintendent for the fiscal year for which the grant is sought. The regional superintendent shall review and electronically forward the application to the State Board of Education by the application deadline.
- c) Each application shall include the following information.
 - 1) The names, addresses, and descriptions of the facilities included in the project.
 - 2) A narrative description of the nature and scope of the project, including the starting and completion dates for the project.
 - 3) The total cost of the project, amount and source of local matching funds (using the revenue and account codes set forth at 23 Ill. Adm. Code 100 (Requirements for Accounting, Budgeting, Financial Reporting, and Auditing)) and the requested grant amount.
 - 4) For applicants that are seeking more than one grant in a fiscal year, the order in which the applicant wants its projects funded.
 - 5) Such assurances as the State Board of Education may require, to include at least the following:
 - A) certification by a licensed design professional of the reasonableness of the estimated costs and energy efficiency

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- measures, and, if available at the time application is made, an estimate of the annual energy savings that will be realized;
- B) that the local board of education, in the case of school districts, or other school governing authority authorized the school energy efficiency project during a duly convened meeting; and
- C) that the local board of education, in the case of school districts, or other school governing authority reserved local funds in an amount equal to the school energy efficiency project grant requested to meet the local match requirement.
- d) Submission of the electronic application shall be evidence of authorization by the school board or other governing board.
- e) An applicant submitting an incomplete application shall be contacted by staff of the State Board regarding the need for additional information. An application must be complete by the submission deadline in order to be considered. All information contained in the application shall be subject to verification and correction by the State Superintendent by such means as on-site inspection and review of documents.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 151.230 Award of School Energy Efficiency Project Grants – Applicants with a Population of 500,000 or Fewer

Grant awards to applicants with a population of 500,000 or fewer residents shall be made as provided in this Section.

- a) An applicant that submits a timely, complete and accurate application that is in compliance with the School Construction Law and this Subpart and that indicates that the applicant has a qualifying project shall be awarded a grant for the approved project provided that the appropriation is sufficient to fund the grant.
- b) If the appropriation for any fiscal year is insufficient to fund all approved projects, then grants shall be awarded in the following order until the appropriation is exhausted.

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- 1) Grants shall be awarded in rounds, with each applicant being allowed one approved project per round.
- 2) Within each round, grants shall be awarded in order of the applicant's need index, proceeding from greatest to least.
- c) For a school district applicant, the need index shall be determined by dividing the equalized assessed valuation per pupil in average daily attendance of the school district at the 90th percentile of wealth for districts of that type (i.e., elementary, high school, or unit) by the equalized assessed valuation per pupil in average daily attendance of the applicant.
 - 1) For an applicant that does not possess property taxing authority, its equalized assessed valuation per pupil in average daily attendance shall be that of the school district in which the greatest number of the applicant's students reside.
 - 2) For purposes of calculating the need index, the equalized assessed valuation and average daily attendance shall be taken from the general state aid claims filed in the fiscal year for which a grant is made. The average daily attendance to be used shall be the district's best three months average daily attendance.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 151.235 Award of School Energy Efficiency Project Grants – School Districts with a Population Exceeding 500,000

A school district with a population exceeding 500,000 residents that submits a timely, complete and accurate application in compliance with the School Construction Law and this Subpart shall be awarded a grant in the amount provided by Section 5-200(c) of the School Construction Law.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 151.240 Terms of the Grant

- a) Grants shall be subject to the Illinois Grant Funds Recovery Act [30 ILCS 705]. Any grant funds not expended or legally obligated within two years after

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disbursement by the State shall be returned to the State Board of Education within 45 days.

- b) Grant funds may only be used for the project described in the approved application and shall be accounted for in compliance with applicable accounting rules set forth at 23 Ill. Adm. Code 100 (Requirements for Accounting, Budgeting, Financial Reporting, and Auditing). The applicant must provide local matching funds in an amount equal to the grant. If actual project expenditures are less than expected so that the amount of the grant is greater than 50 percent of the total project expenditures, then the applicant shall refund the amount of the grant that is in excess of 50 percent of actual project expenditures.
- c) Upon completion of the project, a final expenditure report, subject to audit, shall be submitted to the regional office of education and State Superintendent or designee within 30 days after final project closeout. The licensed design professional shall certify the final expenditure report. The final expenditure report shall describe the use of the grant funds.
- d) The applicant shall comply with the School Construction Law, this Subpart and all other applicable laws and regulations in completing a project.

(Source: Added at 34 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Transitional Bilingual Education
- 2) Code Citation: 23 Ill. Adm. Code 228
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
228.5	New Section
228.10	Amendment
228.15	Amendment
228.20	Amendment
228.25	Amendment
228.27	New Section
228.30	Amendment
228.35	New Section
228.40	Amendment
228.50	Amendment
228.60	Amendment
- 4) Statutory Authority: 105 ILCS 5/ 2-3.39(1) and 14C
- 5) A Complete Description of the Subjects and Issues Involved: The majority of the changes proposed in Part 228 flow from PA 95-793, effective January 1, 2009, which clarifies the law to explicitly direct school districts to provide bilingual education services required under Article 14C of the School Code to students enrolled in preschool programs established by the districts.

Also included in the proposal is new Section 228.27, which addresses districts' plans for continuing services for students who leave a transitional bilingual education (TBE) program or a transitional program of instruction (TPI) without having achieved English proficiency. These new provisions help to more clearly identify school district requirements under both State law and the federal mandate in the Equal Educational Opportunities Act (EEOA). That is, Section 14C-3 of the School Code requires districts to serve students either until the student achieves English proficiency or for three years, whichever comes first, while Section 1703(f) of the EEOA requires school districts to provide services that will enable limited English proficient (LEP) students to "overcome barriers" to educational achievement. The addition of these new requirements will address an inquiry from the U.S. Department of Justice, Civil Rights Division, which questioned whether the agency, by not specifically referencing the EEOA in its rules, was violating Section 1703(f). Legal staff do not believe the agency has violated the law. The proposed addition of Section 228.27 to the rules, however, demonstrates that, despite

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a state law explicitly permitting school districts to exit non-proficient students from TBE/TPI after three years, the agency expects school districts that do in fact exit non-proficient students to provide these students services in accordance with federal law.

Section 228.25 also is being amended to require statewide exit criteria. This change is the result of federal Title I monitoring conducted in 2008, in which the agency received a finding for lacking consistent, statewide criteria to exit students from the LEP subgroup for Annual Yearly Progress (AYP) purposes. The current rule allows districts to require a higher cut-score than the minimum set by the agency and/or to set additional exit criteria indicators to determine when students are no longer LEP. As a result, the parameters of the LEP subgroup vary from district to district preventing a valid comparison of the LEP subgroup across the State. The amendment to 228.25 addresses the problem by establishing an exit standard for LEP students with statewide uniformity. Under the proposed rules, districts must use only the State-established cut-score.

Other proposed amendments address the Spanish Language Arts Standards and certificate requirements for directors of bilingual programs. The Spanish Language Arts Standards (2005 version) are being incorporated by reference. These align to the existing Illinois Learning Standards for English Language Arts (set forth in rules at 23 Ill. Adm. Code 1. Appendix D). Districts will be expected to include in their bilingual education plans for the 2010-11 school year a discussion of how they plan to align instruction to the standards, which must occur in the 2011-12 school year. Beginning in 2011-12, plans also must discuss how student performance will be measured and curriculum modified, as needed.

New Section 228.35 addresses requirements for bilingual staff and administrators, as well as for ongoing professional development. This Section contains requirements that were previously found in Sections 228.10 and 228.30(c). In addition to moving existing requirements under a single Section, several modifications also were made: a cross-reference is proposed to the requirements for preschool teachers and noncertificated personnel found in Part 235 (Early Childhood Block Grant) and an allowance is made for preschool teachers to meet bilingual certification requirements by July 1, 2014.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No

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- 9) Does this rulemaking contain incorporations by reference? Yes; see Sections 228.25(b), and 228.30(b), (c), and (d).
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: 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 90 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, Illinois 62777-0001

217/782-5270

Comments may also be submitted electronically, addressed to:

rules@isbe.net

- 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: School districts seeking reimbursement for the excess costs of providing bilingual education services submit an annual application (Section 228.40). Additionally, a school district that exits students from the program before they are proficient in English must submit to the State Superintendent a plan for how it will ensure equal participation in the district's instructional programs for these students.
- C) Types of professional skills necessary for compliance: None

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- 14) Regulatory Agenda on which this rulemaking was summarized: July 2009

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES
 SUBTITLE A: EDUCATION
 CHAPTER I: STATE BOARD OF EDUCATION
 SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 228
 TRANSITIONAL BILINGUAL EDUCATION

Section

228.5	<u>Purpose and Applicability</u>
228.10	Definitions
228.15	Identification of Eligible Students
228.20	<u>Student Language Classification Data</u> Public School Bilingual Census
228.25	Program Options, Placement, and Assessment
228.27	<u>Language Acquisition Services for Certain Students Exiting the Program</u>
228.30	Establishment of Programs
228.35	<u>Personnel Qualifications; Professional Development</u>
228.40	Students' Participation; Records
228.50	Program Plan Approval and Reimbursement Procedures
228.60	<u>Evaluation</u> Enforcement

AUTHORITY: Implementing Article 14C and authorized by Section 2-3.39(1) of the School Code [105 ILCS 5/Art. 14C and 2-3.39(1)].

SOURCE: Adopted May 28, 1976; codified at 8 Ill. Reg. 5176; Part repealed, new Part adopted at 11 Ill. Reg. 5969, effective March 23, 1987; amended at 17 Ill. Reg. 104, effective December 18, 1992; amended at 26 Ill. Reg. 898, effective January 15, 2002; amended at 27 Ill. Reg. 9996, effective June 20, 2003; amended at 30 Ill. Reg. 17434, effective October 23, 2006; amended at 34 Ill. Reg. _____, effective _____.

Section 228.5 Purpose and Applicability

- a) This Part establishes requirements for school districts' provision of services to students in preschool through grade 12 who have been identified as limited English proficient in accordance with Article 14C of the School Code [105 ILCS 5/14C] and this Part.

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- b) The requirements of Article 14C of the School Code and this Part shall apply to every school district in Illinois, regardless of whether the district chooses to seek funding pursuant to Section 228.50 of this Part.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 228.10 Definitions

~~"Bilingual Education Teacher" means a teacher who:~~

~~holds a valid Illinois certificate with an endorsement or approval in bilingual education or an endorsement in ENL with a language-specific designation for bilingual education (see 23 Ill. Adm. Code 25. Appendix E and 23 Ill. Adm. Code 1.780 and 1.781); or~~

~~holds a Transitional Bilingual Certificate endorsed for teaching in a language other than English and issued by the State Board of Education in accordance with 23 Ill. Adm. Code 25.90; or~~

~~holds a Visiting International Teacher Certificate and meets the requirements of 23 Ill. Adm. Code 25.92(i).~~

"English as a Second Language" or "ESL" ~~or "English as a New Language" or "ENL"~~ means specialized instruction designed to assist students whose home language is other than English in attaining English language proficiency. ~~ESL or ENL~~ instruction includes skills development in listening, speaking, reading, and writing. (ESL ~~is and ENL are~~ not to be confused with English language arts as taught to students whose home language is English.)

"English Language Proficiency Assessment" means the ACCESS for ELLs[®] (World-class Instructional Design and Assessment Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706 (2006)).

"Home Language" means that language normally used in the home by the student and/or by the student's parents or legal guardians, or by anyone who resides in the student's household.

"Language Background other than English" means that the native language of a

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student in preschool, kindergarten or any of grades 1 through 12, whether born in the United States or born elsewhere, is other than English or that the student comes from a home where a language other than English is spoken by the student, or by his or her parents or legal guardians, or by anyone who resides in the student's household.

"Preschool Program" means instruction provided to children who are ages 3 up to but not including those of kindergarten enrollment age as defined in Section 10-20.12 of the School Code [105 ILCS 5/10-20.12] in any program administered by a school district, regardless of whether the program is provided in an attendance center or a non-school-based facility.

"Prescribed Screening Instrument" means the:

WIDA ACCESS Placement Test (W-APT)TM (2006 or 2007) for students entering or in the second semester of grades 1 through 12 (World-class Instructional Design and Assessment Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706-(2006)).

Measure of Developing English Language (MODELTM) (2008) for students entering kindergarten or the first semester of grade 1 (World-class Instructional Design and Assessment Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706);

Either the Pre-IPT[®] Oral English Test (Ballard & Tighe, P.O. Box 219, Brea CA 92822-0219 (2004)) or a screening process that meets the requirements of Section 228.50(b)(4)(E) of this Part.

"Standard School Program" means the educational program offered by the local school district to the majority of its students ("general education").

"Students of Limited English Proficiency" means students in preschool, kindergarten or any of grades 1 through 12, whether born in the United States or born elsewhere, whose native language background is a language other than English and whose difficulties in speaking, reading, writing, or understanding English may be sufficient to deny them:

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the ability to meet the State's proficient level of achievement on State assessments;

the ability to successfully achieve in classrooms where the language of instruction is English; or

the opportunity to participate fully in the school setting.

~~"Students of Non-English Background" means students, whether born in the United States or born elsewhere, whose native language is other than English or students who come from homes where a language other than English is spoken, either by the students themselves or by their parents or legal guardians.~~

~~"Teacher of English as a Second Language" or "Teacher of English as a New Language" means a teacher who:~~

~~holds a special certificate endorsed for teaching ESL or ENL, issued by the State Board of Education in accordance with 23 Ill. Adm. Code 25; or~~

~~holds a valid Illinois certificate and an endorsement or approval for ESL, issued by the State Board of Education pursuant to 23 Ill. Adm. Code 1.780, 1.781, and 1.782; or~~

~~meets the requirements set forth in 23 Ill. Adm. Code 1.782.~~

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 228.15 Identification of Eligible Students

- a) Each school district shall administer a home language survey with respect to each student in preschool, kindergarten or any of grades 1 through 12 who is entering the district's schools or any of the district's preschool programs for the first time, for the purpose of identifying students who have a language of non-English background other than English. The survey should be administered as part of the enrollment process or, for preschool programs, by the first day the student commences participation in the program. The survey shall include at least the following questions, and the student shall be identified as having a language non-English background other than English if the answer to either question is yes:

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- 1) Whether a language other than English is spoken in the student's home and, if so, which language; and
 - 2) Whether the student speaks a language other than English and, if so, which language.
- b) The home language survey shall be administered in English and, if feasible, in the student's home language.
 - c) The home language survey form shall provide spaces for the date and the signature of the student's parent or legal guardian.
 - d) The completed home language survey form shall be placed into the student's temporary record as defined in 23 Ill. Adm. Code 375 (Student Records).
 - e) The district shall, ~~using the prescribed screening instrument,~~ screen the English language proficiency of each student identified through the home language survey as having a ~~language non-English~~ background ~~other than English by using the prescribed screening instrument applicable to the student's grade level (i.e., kindergarten or any of grades 1 through 12) or as set forth in a preschool program's application submitted pursuant to Section 228.50(b)(4)(E) of this Part.~~ This ~~screening assessment~~ shall take place within 30 days ~~either~~ after the student's enrollment in the district ~~or, for preschool programs, after the student commences participation in the program,~~ for the purpose of determining the student's eligibility for bilingual education services and, if eligible, the appropriate placement for the student. For kindergarten, all students identified through the home language survey, including students previously screened when enrolled in preschool, must be screened using the prescribed screening instrument for kindergarten.
- 1) The prescribed screening instrument does not need to be administered to a student who, in his or her previous school district:
 - A) has been screened and identified as English language proficient as required in this subsection (e); or
 - B) has met the State exit requirements as described in Section 228.25(b)(2) of this Part; or

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- C) has met all of the following criteria:
- i) resides in a home where a language other than English is spoken, and
 - ii) has not been screened or identified as a student with limited English proficiency, and
 - iii) has been enrolled in the general program of instruction in the school he or she has previously attended, and
 - iv) has been performing at or above grade level as evidenced by having met or exceeded the Illinois Learning Standards in reading and math on the student's most recent State assessment administered pursuant to Section 2-3.64 of the School Code [105 ILCS 5/2-3.64], provided that the assessment was not administered with accommodations for students of limited English proficiency.
- 2) A district ~~must~~may rely upon a student's score attained ~~on the prescribed screening instrument or~~ on the English language proficiency assessment ~~instrument~~ prescribed under Section Section 228.25(~~be~~) of this Part, if ~~either is~~ available from another school district or another state, provided that the score was achieved no more than 12 months prior to the district's need to assess the student's proficiency in English for purposes of eligibility and placement.
- 3) If results are not available pursuant to subsection (e)(2) of this Section, then a district must rely upon a student's score on the prescribed screening instrument if available from another school district or another state for the purposes of eligibility and placement for students entering any of grades 1 through 12, if the student's score on the prescribed screening instrument was achieved no more than 12 months prior to the district's need to assess the student's proficiency in English.
- 4)2) Each student whose score on the prescribed screening instrument is identified as not "proficient" as defined by the State Superintendent of Education shall be considered to have limited English proficiency and

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therefore to be eligible for, and shall be placed into a program of, bilingual education services.

A) For preschool programs using a procedure other than the Pre-IPT, "proficiency" is the point at which performance identifies a child as proficient in English, as set forth in the program's proposed screening process submitted pursuant to Section 228.50(b)(4)(E) of this Part.

B) For any preschool~~However, even if the~~ student who scores at the "proficient" level, the school district may consider additional indicators such as ~~the results of criterion-referenced or locally developed tests,~~ teachers' evaluations of performance, samples of a student's work, or information received from family members and school personnel in order to determine whether the student's proficiency in English is limited and the student is eligible for services.

~~3) Students who, based on review of assessment scores and other evidence such as that outlined in subsection (e)(2) of this Section, are judged to be of limited English proficiency shall be eligible for, and shall be placed into a program of, bilingual education services.~~

f) Each district shall ensure that any accommodations called for in the Individualized Education Programs of students with disabilities are afforded to those students in the administration of the screening instrument discussed in this Section and the English language proficiency assessment prescribed under Section 228.25(be) of this Part.

g) The parent or guardian of any child resident in a school district who has not been identified as having limited English proficiency may request the district to determine whether the child should be considered for placement in a bilingual education program, and the school district shall make that determination upon request, using the process described in this Section. ~~A determination contested by a parent or legal guardian may be appealed to the regional superintendent of schools for the region in which the district is located, pursuant to the provisions of Section 3-10 of the School Code [105 ILCS 5/3-10].~~

(Source: Amended at 34 Ill. Reg. _____, effective _____)

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Section 228.20 Student Language Classification Data~~Public School Bilingual Census~~

~~a) In order to meet the requirements of Section 14C-3 of the School Code, every school district shall update its individual student records in the Student Information System (SIS) authorized under 23 Ill. Adm. Code 1.75 (Public Schools Evaluation, Recognition and Supervision) no later than the first day in March of each year to reflect the following information. No later than the first day of March of each year, every school district shall submit a bilingual census report for that school year to the State Superintendent of Education (Section 14C-3 of the School Code [105 ILCS 5/14C-3]). The bilingual census report shall be submitted on forms provided by the Superintendent and shall include:~~

- ~~a) 1) whether the student has a language number of students of non-English background other than English in each attendance center, as identified via the home language survey;~~
- ~~b) 2) whether the student has number of those students who have been identified as having limited English proficiency based on the results of the prescribed screening instrument or the English language proficiency assessment and other factors discussed in Section 228.15(e) or Section 228.25(b) of this Part; and~~
- ~~c) 3) the home language, birth date, languages, ages, and grade or achievement level levels of the student students identified as having limited English proficiency.~~
- ~~b) A district may use the number of students who have been identified in its census report as having limited English proficiency and who are thus eligible for bilingual education services as a preliminary count for the purpose of submitting a program application pursuant to Section 228.50 of this Part.~~

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 228.25 Program Options, Placement, and Assessment

- a) Program Options and Placement
 - 1) *When an attendance center has an enrollment of 20 or more limited English proficient students of the same language classification in kindergarten or any of grades 1 through 12, the school district must establish a transitional bilingual education (TBE) program for each*

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language classification represented by those students (Section 14C-3 of the School Code). A further assessment of those students to determine their specific programmatic needs or for placement in either a full-time or a part-time program may be conducted.

2)b) *When an attendance center has an enrollment of 19 or fewer students of limited English proficiency ~~off from~~ any single ~~non-English~~ language classification other than English in kindergarten or any of grades 1 through 12, the school district shall conduct an individual student language assessment to determine each student's need for native language instruction and may provide a transitional bilingual program in the ~~non-English~~ languages other than English common to ~~thesesuch~~ students. If the district elects not to provide a transitional bilingual program, the district shall provide a locally determined transitional program of instruction (TPI) for those students. (Section 14C-3 of the School Code)*

3) When a preschool program of the school district has an enrollment of 20 or more students of limited English proficiency of any single language classification other than English in an attendance center or a non-school-based facility, the school district shall establish a TBE program for each language classification represented by the students. If the preschool program of an attendance center or non-school-based facility has 19 or fewer students of limited English proficiency of any single language classification other than English, then the school district shall meet the requirements of subsection (a)(2) of this Section when determining placement and the program to be provided.

b)e) English Language Proficiency Assessment~~Annual Examination~~

1) *School districts must annually assess the English language proficiency, including aural comprehension (listening), speaking, reading, and writing skills, of all children of limited English-speaking ability in kindergarten and any of grades 1 through 12~~students enrolled in programs~~ (Section 14C-3 of the School Code), using the English language proficiency assessment prescribed by the State Superintendent of Education. This assessment shall be administered during a testing window designated by the State Superintendent, for the purpose of determining individual students' continuing need and eligibility for bilingual education services. The annual assessment shall be based on the "English Language*

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Proficiency Standards for English Language Learners in PreKindergarten through Grade 12"~~Framework for Large Scale Assessment of the English Language Proficiency Standards for English Language Learners K-12"~~ (2007~~2004~~), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium~~State of Wisconsin~~ and posted at <http://www.wida.us/standards/elp.aspx> www.isbe.net/bilingual/pdfs/elps_framework.pdf. No later amendments to or editions of these standards are incorporated by this Section.

- 2) The State Superintendent shall determine, and inform school districts of, the composite score and the literacy score that will be used to determine whether a student is identified as "proficient".
 - A) Each student whose score on the English language proficiency assessment is identified as "proficient" ~~shall~~ ~~may be considered eligible to~~ exit the program of bilingual education services, subject to the provisions of Section 14C-3 of the School Code [105 ILCS 5/14C-3]. ~~However, the school district may also consider other indicators such as those listed in Section 228.15(e)(2) of this Part to determine whether individual students continue to exhibit limited English proficiency and remain eligible for bilingual education services, subject also to the provisions of Section 14C-3 of the School Code [105 ILCS 5/14C-3].~~
 - B) Each student whose score is identified as "proficient" in accordance with subsection (b)(2)(A) of this Section shall no longer be identified as limited English proficient.
- 3) Each~~Beginning with the 2007 administration of the annual English language proficiency examination, each~~ student who is not enrolled in a program under this Part but who has been identified as having limited English proficiency ~~at any time since 2006~~ shall be required to participate in the ~~assessment~~annual examination each year until he or she achieves a "proficient" score.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 228.27 Language Acquisition Services for Certain Students Exiting the Program

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In accordance with Section 1703(f) of the Equal Educational Opportunities Act (EEOA), a school district must provide services that will enable limited English proficient students to "overcome barriers that impede equal participation by these students in the district's instructional programs" (see 20 USC 1703). Section 14C-3 of the School Code, however, authorizes school districts to discontinue services to students who have been enrolled and participated in the TBE or TPI program for three consecutive years. In instances where a school district chooses to discontinue TBE or TPI program services as permitted under Section 14C-3 of the School Code for those students who have not achieved English proficiency as determined by the process set forth in Section 228.25(b) of this Part, the district shall submit a plan to the State Superintendent that describes the actions it will take to meet its obligations under Section 1703(f) of the EEOA. Any amendments to the plan shall be submitted to the State Superintendent no later than 30 days following adoption of the changes. The plan shall at least include:

- a) the process and criteria the district will use to make a determination of when to exit eligible students from the TBE or TPI program (e.g., after a certain amount of time in the program, once a prescribed academic or proficiency level is achieved);
- b) The language acquisition services and methods to be provided, including how the services and methods differ from the general program of instruction in content, instructional goals and the use of English and native language instruction;
- c) How the program will meet the educational needs of the students and build on their academic strengths;
- d) How the program will specifically help the students learn English and meet academic achievement standards for grade promotion and graduation;
- e) The names and qualifications of the staff who will implement the program; and
- f) How sufficient resources, including equipment and instructional materials, shall be made available to support the program.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 228.30 Establishment of Programs

- a) Administrative Provisions

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- 1) Program Facilities – Other than for preschool education programs, TBE and TPI programs~~Programs~~ shall be located in regular public school facilities rather than in separate facilities. (Section 14C-6 of the School Code [105 ILCS 5/14C-6]) If such a location is not feasible, the substitute location shall be comparable to those made available to a majority of the district's students with respect to space and equipment. If housed in a facility other than a public school (including a charter school), the school district shall provide a written explanation in its annual application to the State Superintendent of Education as to why the use of a public school building is not feasible.
- 2) Course Credit – Students enrolled in approved programs shall receive full credit for courses taken in thesesueh programs, which shall count toward promotion and fulfillment of district graduation requirements. Courses in ESL shall count toward English requirements for graduation. Students who change attendance centers or school districts shall do so without loss of credit for coursework completed in the program.
- 3) *Extracurricular Activities – Each district shall ensure that students enrolled in programs shall have the opportunity to participate fully in the extracurricular activities of the public schools in the district.* (Section 14C-7 of the School Code [105 ILCS 5/14C-7])
- 4) Inclusion of Students Whose First or Home Language is English – Students whose first or home language is English may be included in a program under this Part provided that all students of limited English proficiency are served.
- 5) Joint Programs – A school district may join with one or more other school districts to provide joint programs or services in accordance with the provisions of Section 10-22.31a of the School Code [105 ILCS 5/10-22.31a]. The designated administrative agent shall adhere to the procedures contained in 23 Ill. Adm. Code 100 (Requirements for Accounting, Budgeting, Financial Reporting, and Auditing)~~110 (Program Accounting Manual)~~ as they pertain to cooperative agreements.
- 6) Preschool and Summer School – *A school district may establish preschool and summer school programs for students of limited English proficiency, or join with other school districts in establishing such programs. Summer*

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school programs shall not replace programs required during the regular school year. (Section 14C-11 of the School Code [105 ILCS 5/14C-11])
A school district that offers a summer school program or preschool program shall provide bilingual education services for students having limited English proficiency in accordance with Article 14C and this Part.

b) Instructional Specifications

- 1) Student-Teacher Ratio – The student-teacher ratio in the ESL and native language components of programs serving students in kindergarten or any of grades 1 through 12 as of September 30 of each school year shall not exceed 90% of the average student-teacher ratio in general education classes for the same grades in that attendance center. Decreases in the ratio for general education during the course of a school year due to students' mobility shall not require corresponding adjustments within the bilingual program. Further, additional students may be placed into bilingual classes during the course of a school year, provided that no bilingual classroom may exhibit a student-teacher ratio that is greater than the average for general education classes in that grade and attendance center as a result of ~~thesesuch~~ placements. For preschool programs established pursuant to Section 2-3.71 of the School Code [105 ILCS 5/2-3.71], the student-teacher ratios for each preschool classroom providing bilingual education services shall meet the requirements of 23 Ill. Adm. Code 235.30(d) (Early Childhood Block Grant).
- 2) Grade-Level Placement – *Students enrolled in a program of transitional bilingual education shall be placed in classes with students of approximately the same age or grade level, except as provided in subsection (b)(3) of this Section.* (Section 14C-6 of the School Code)
- 3) Multilevel Grouping – *If students of different age groups or educational levels are combined in the same class, the school district shall ensure that the instruction given each student is appropriate to his/her age or grade level.* (Section 14C-6 of the School Code) Evidence of compliance with this requirement shall be:
 - A) individualized instructional programs; or
 - B) grouping of students for instruction according to grade level.

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- 4) Beginning with the 2011-12 school year, instruction in Spanish language arts, where provided under subsection (c) or (d) of this Section, shall be aligned to the standards that are appropriate to the ages or grade levels of the students served, which are set forth in the document titled "World-Class Instructional Design and Assessment: Spanish Language Arts Standards" (2005), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium and posted at <http://www.wida.us/standards/sla.aspx>. No later amendments to or editions of these standards are incorporated by this Section.
- 5) Language Grouping – School districts may place students of limited English proficiency who have different home languages in the same class, provided that, in classes taught in the native language:
- A) instructional personnel or assistants representing each of the languages in the class are used; and
- B) the instructional materials are appropriate for the languages of instruction.
- 6)5) Program Integration – *In courses of subjects in which language is not essential to an understanding of the subject matter, including, but not necessarily limited to, art, music, and physical education, students of limited English proficiency shall participate fully with their English-speaking classmates.* (Section 14C-7 of the School Code)
- e) Administrators
Beginning July 1, 2008, each individual newly assigned to administer a program under this Part shall meet the applicable requirements of this subsection (e). Administrators first assigned on or before June 30, 2008, shall be subject to the applicable requirements of this subsection (e) as of July 1, 2010.
- 1) Except as provided in subsections (c)(3) and (4) of this Section, any person designated to administer a TBE program must hold a valid administrative certificate or supervisory endorsement issued by the State Board of Education in accordance with applicable provisions of 23 Ill. Adm. Code 25 (Certification) and 23 Ill. Adm. Code 1 (Public Schools

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~~Evaluation, Recognition and Supervision) and must hold the bilingual approval or endorsement.~~

- 2) ~~Except as provided in subsections (c)(3) and (4) of this Section, any person designated to administer a TPI program must hold a valid administrative certificate or supervisory endorsement issued by the State Board of Education in accordance with applicable provisions of 23 Ill. Adm. Code 25 and 1 and must hold the bilingual or ESL approval or endorsement.~~
 - 3) ~~A person designated to administer a TBE or TPI program in a district with fewer than 200 TBE/TPI students shall be exempt from the requirement for bilingual or ESL approval or endorsement, provided that he or she annually completes two hours of professional development specifically designed to address the needs of students with limited English proficiency. Documentation for this professional development activity shall be made available to a representative of the State Board of Education upon request.~~
 - 4) ~~A person who has been assigned to administer a TPI program in a district that experiences such growth in the number of students eligible for bilingual education that a TBE program is required shall become subject to the requirements of subsection (c)(1) of this Section at the beginning of the fourth school year of the TBE program's operation. A person who has been assigned to administer a program under subsection (c)(3) of this Section in a district where the number of students eligible for bilingual education grows beyond 200 shall become subject to the requirements of subsection (c)(2) of this Section at the beginning of the fourth school year in which the eligible population exceeds 200 students. That is, each individual may continue to serve for the first three school years on the credentials that qualified him or her to administer the program previously operated.~~
- d) **In-Service Training for Staff**
- 1) ~~Each school district having a program shall annually plan in-service training activities for the certificated and noncertificated personnel involved in the education of students of limited English proficiency. This plan shall be included in the district's annual application and shall be~~

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~~approved by the State Superintendent of Education if it meets the standards set forth in subsections (d)(2) and (d)(3) of this Section.~~

- ~~2) Program staff beginning their initial year of service shall be involved in training activities that will develop their knowledge of the requirements for the program established under this Part and the employing district's relevant policies and procedures.~~
- ~~3) Training activities shall be provided to all bilingual program staff at least twice yearly and shall address at least one of the following areas:
 - ~~A) current research in bilingual education;~~
 - ~~B) content area and language proficiency assessment of students with limited English proficiency;~~
 - ~~C) research-based methods and techniques for teaching students with limited English proficiency;~~
 - ~~D) research-based methods and techniques for teaching students with limited English proficiency who also have disabilities; and~~
 - ~~E) the culture and history of the United States and of the country, territory or geographic area that is the native land of the students or of their parents.~~~~
- ~~4) In addition to any other training required under this subsection (d), each individual who is responsible for administering the screening instrument referred to in Section 228.15(e) of this Part or the annual English language proficiency examination discussed in Section 228.25(e) of this Part shall be required to complete an on-line training sequence furnished by the State Board of Education and to pass the test embedded in that material.~~

c)e) Specific Requirements for Transitional Bilingual Education (TBE) Programs

- 1) Each full-time TBE program shall consist of at least the following components (Section 14C-2 of the School Code):
 - A) *Instruction in subjects which are either required by law (see 23 Ill.*

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Adm. Code 1) or by the student's school district, to be given in the student's home language and in English; core subjects such as math, science and social studies must be offered in the student's home language;

B) *Instruction in the language arts in the student's home language;*
and

C) *Instruction in English as a second language, which must align to the "English Language Proficiency Standards for English Language Learners in PreKindergarten through Grade 12" (2007), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium and posted at <http://www.wida.us/standards/elp.aspx>. No later amendments to or editions of these standards are incorporated by this Section; and*

~~D)~~E) *Instruction in the history and culture of the country, territory, or geographic area which is the native land of the students or of their parents and in the history and culture of the United States.*

2) Programs may also include other services, modifications, or activities such as counseling, tutorial assistance, learning settings, or special instructional resources that will assist students of limited English proficiency in meeting the Illinois Learning Standards (see 23 Ill. Adm. Code 1, Appendix D) and for preschool programs established pursuant to Section 2-3.71 of the School Code and for kindergarten levels, the Illinois Early Learning Standards (see 23 Ill. Adm. Code 235, Appendix A).

3) Students may be placed into a part-time program, or students previously placed in a full-time program may be placed in a part-time program, if an assessment of the student's English language skills has been performed in accordance with the provisions of either Section 228.15(e) or Section 228.25(~~be~~) of this Part and the assessment results indicate that the student has sufficient proficiency in English to benefit from a part-time program. Evidence of sufficient proficiency shall be achievement of the minimum score set by the State Superintendent either on the prescribed screening instrument required in Section 228.15(e) of this Part or the English language proficiency assessment required in Section 228.25(b). ~~District~~ However, district staff also shall consider the student's score and

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his or her proficiency in the home language; prior performance, if any, in coursework taught exclusively in English; current academic performance; and other relevant factors such as age, disability, and cultural background in order to determine whether a full-time or a part-time program is appropriate.

- 4) A part-time program shall consist of components of a full-time program that are selected for a particular student based upon an assessment of the student's educational needs. Each student's part-time program shall provide daily instruction in English and in the student's native language as determined by the student's needs.
- 5) *Parent and Community Participation – Each district or cooperative shall establish a parent advisory committee consisting of parents, legal guardians, transitional bilingual education teachers, counselors, and community leaders. This committee shall participate in the planning, operation, and evaluation of programs. The majority of committee members shall be parents or legal guardians of students enrolled in these programs. Membership on this committee shall be representative of the languages served in programs to the extent possible. (Section 14C-10 of the School Code [105 ILCS 5/14C-10])*
 - A) The committee shall:
 - i) meet at least four times per year;
 - ii) maintain on file with the school district minutes of these meetings; and
 - iii) review the district's annual program application to the State Superintendent of Education.
 - B) Each district or cooperative shall ensure that training is provided annually to the members of its parent advisory committee. This training shall be conducted in language that the parent members can understand and shall encompass, but need not be limited to, information related to instructional approaches and methods in bilingual education; the provisions of State and federal law related to students' participation and parents' rights; and accountability

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measures relevant to students in bilingual programs.

d)† Specific Requirements for Transitional Program of Instruction (TPI)

- 1) Program Structure – The level of a student's proficiency in English, as determined by an individual ~~student language~~ assessment of the student's language skills on the basis of either the prescribed screening instrument required in Section 228.15(e) of this Part or the English language proficiency assessment required in Section 228.25(b) of this Part in conjunction with other information available to the district regarding the student's level of literacy in his or her home language, will determine the structure of the student's instructional program.
- 2) Program Components – A transitional program of instruction must include instruction or other assistance in the student's home language to the extent necessary, as determined by the district on the basis of the prescribed screening instrument~~student assessment~~ required in Section 228.15(e) of this Part or the English language proficiency assessment required in Section 228.25(b) of this Part, to enable the student to keep pace with his/her age or grade peers in achievement in the core academic content areas. A transitional program of instruction may include, but is not limited to, the following components:
 - A) instruction in ESL, which must align to the "English Language Proficiency Standards for English Language Learners in PreKindergarten through Grade 12" (2007), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium and posted at <http://www.wida.us/standards/elp.aspx>. No later amendments to or editions of these standards are incorporated by this Section;
 - B) language arts in the students' home language; and
 - C) instruction in the history and culture of the country, territory, or geographic area that is the native land of the students or of their parents and in the history and culture of the United States.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

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Section 228.35 Personnel Qualifications; Professional Development

- a) Each individual assigned to provide instruction in a student's native language shall meet the requirements for bilingual education teachers set forth in 23 Ill. Adm. Code 25 (Certification) and 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision), as applicable.
- b) Each individual assigned to provide instruction in ESL shall meet the requirements for ESL or English as a New Language teachers set forth in 23 Ill. Adm. Code 25 and 23 Ill. Adm. Code 1, as applicable.
- c) Preschool Programs
 - 1) Each individual assigned to provide instruction to students in a preschool program shall meet the requirements of 23 Ill. Adm. 235.20(c)(8)(A) (Early Childhood Block Grant).
 - 2) By July 1, 2014, each individual assigned to provide instruction to students in a preschool program also shall meet the applicable requirements of subsection (a) or (b) of this Section, depending on the assignment.
 - 3) Noncertificated staff employed to assist in instruction in a preschool program shall meet the requirements of 23 Ill. Adm. 235.20(c)(8)(B).
- d) Administrators

Beginning July 1, 2008, each individual newly assigned to administer a program under this Part shall meet the applicable requirements of this subsection (d). Administrators first assigned on or before June 30, 2008 shall be subject to the applicable requirements of this subsection (d) as of July 1, 2010.

 - 1) Except as provided in subsections (d)(3) and (4) of this Section, any person designated to administer a TBE program must hold a valid administrative certificate or a supervisory endorsement issued on an initial or standard teaching certificate by the State Board of Education in accordance with applicable provisions of 23 Ill. Adm. Code 25 (Certification) and 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision) and must hold the bilingual approval or endorsement or the ENL endorsement with a language designation.

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- 2) Except as provided in subsections (d)(3) and (4) of this Section, any person designated to administer a TPI program must hold a valid administrative certificate or a supervisory endorsement issued on an initial or standard teaching certificate by the State Board of Education in accordance with applicable provisions of 23 Ill. Adm. Code 25 and 1 and must hold the bilingual or ESL approval or endorsement or the ENL endorsement.
 - 3) A person designated to administer a TBE or TPI program in a district with fewer than 200 TBE/TPI students shall be exempt from all but the requirement for an administrative certificate or a supervisory endorsement issued on an initial or standard teaching certificate, provided that he or she annually completes a minimum of eight hours of professional development specifically designed to address the needs of students with limited English proficiency. An assurance that this requirement has been met shall be provided annually in a school district's application submitted pursuant to Section 228.50 of this Part. Documentation for this professional development activity shall be made available to a representative of the State Board of Education upon request.
 - 4) A person who has been assigned to administer a TPI program in a district that experiences such growth in the number of students eligible for bilingual education that a TBE program is required shall become subject to the requirements of subsection (d)(1) of this Section at the beginning of the fourth school year of the TBE program's operation. A person who has been assigned to administer a program under subsection (d)(3) of this Section in a district where the number of students eligible for bilingual education reaches 200 shall become subject to the requirements of subsection (d)(2) of this Section at the beginning of the fourth school year in which the eligible population equals or exceeds 200 or more students. That is, each individual may continue to serve for the first three school years on the credentials that qualified him or her to administer the program previously operated.
- e) Professional Development for Staff
- 1) Each school district having a program shall annually plan professional development activities for the certificated and noncertificated personnel

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involved in the education of students of limited English proficiency. This plan shall be included in the district's annual application and shall be approved by the State Superintendent of Education if it meets the standards set forth in subsections (e)(2) and (e)(3) of this Section.

- 2) Program staff beginning their initial year of service shall be involved in training activities that will develop their knowledge of the requirements for the program established under this Part and the employing district's relevant policies and procedures.
- 3) Training activities shall be provided to all bilingual program staff at least twice yearly and shall address at least one of the following areas:
 - A) current research in bilingual education;
 - B) content-area and language proficiency assessment of students with limited English proficiency;
 - C) research-based methods and techniques for teaching students with limited English proficiency;
 - D) research-based methods and techniques for teaching students with limited English proficiency who also have disabilities; and
 - E) the culture and history of the United States and of the country, territory or geographic area that is the native land of the students or of their parents.
- 4) In addition to any other training required under this subsection (e), each individual who is responsible for administering the prescribed screening instrument referred to in Section 228.15(e) of this Part or the annual English language proficiency assessment discussed in Section 228.25(b) of this Part shall be required to complete on-line training designated by the State Superintendent of Education and to pass the test embedded in that material.
- 5) In addition to any other training required under this subsection (e), each district that operates either a TBE or a TPI program for students of Spanish language background in kindergarten and any of grades 1 through

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12 shall provide annually at least one training session related to the implementation of the Spanish language arts standards required under Section 228.30(b)(4) of this Part for staff members of that program who are providing instruction in the Spanish language arts.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 228.40 Students' Participation; Records

- a) Notice of Enrollment and Withdrawal
- 1) *Notice of Enrollment – No later than 30 days after the beginning of the school year or 14 days after the enrollment of any student in a transitional bilingual education program in the middle of a school year, the school district shall notify by mail the parents or legal guardians of the student that their child has been enrolled in a transitional bilingual education program or a transitional program of instruction. The notice shall be in English and in the home language of the student and shall convey, in simple, nontechnical language, all of the information called for in Section 14C-4 of the School Code [105 ILCS 5/14C-4].*
 - 2) *Withdrawal by Parents – Any parent or legal guardian whose child has been enrolled in a program shall have the absolute right to withdraw the child from the program immediately by submitting a written notice of his or her desire to withdraw the child to the school authorities of the school in which the child is enrolled or to the school district in which the child resides. (Section 14C-4 of the School Code)*
- b) Unless terminated as set forth in subsection (a)(2) of this Section, the duration of a student's participation in a program under this Part shall be as set forth in Section 14C-3 of the School Code.
- 1) If a student participates in a TBE or TPI in preschool or kindergarten, then that participation does not count towards the three-year total specified in Section 14C-3 of the School Code.
 - 2) If a student exits a program after three years and is not proficient in English, then the school district shall meet the requirements of Section 228.27 of this Part.

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- c) Maintenance of Records and Reporting Procedures
- 1) Report Cards – The school shall send progress reports to parents or legal guardians of students enrolled in programs in the same manner and with the same frequency as progress reports are sent to parents or legal guardians of other students enrolled in the school district. ~~These~~
 - A) Progress reports shall indicate the student's progress in the program and in the general program of instruction. ~~and~~
 - B) Progress reports shall indicate when the student has successfully completed requirements for transition from the program into the general program of instruction if that information has not been reported separately in writing to the parents or legal guardian.
 - C) Progress reports for all students enrolled in a program under this Part shall be written in English and in the student's home language unless a student's parents or legal guardian agrees agree in writing to waive this requirement. The parents' waiver shall be kept on file in accordance with subsection (c)(3) of this Section.
 - 2) Annual Student Reports – Each district must submit electronically the information requested by the State Superintendent using the Student Information System (see 23 Ill. Adm. Code 1.75) no later than June 30 of each year. Each district also must complete the ~~Transitional Bilingual Education Annual Student Report and the~~ Program Delivery Report, provided by the State Superintendent of Education, in which information on each program ~~and each student participating in the program~~ is compiled.
 - 3) Records – School districts shall maintain records of each student enrolled in programs in the manner prescribed in 23 Ill. Adm. Code 375 (Student Records). These records shall include program entry/exit information, annual English language proficiency assessment ~~test~~ scores and results from the prescribed screening instrument for students in kindergarten and any of grades 1 through 12 or the results from the prescribed screening instrument for students in preschool programs; ~~and~~ other student information (e.g., language, grade level, and attendance); ~~;~~ the rationale for

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a student's placement into a part-time program, where applicable, including documentation of the factors indicating that a part-time program would be appropriate; and documentation of conferences and written communication with parents or legal guardians. Parents and legal guardians of students enrolled in programs shall have access to their students' such records, as specified in 23 Ill. Adm. Code 375.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 228.50 Program Plan Approval and Reimbursement Procedures

- a) Reimbursement for programs provided by school districts pursuant to the provisions of Article 14C of the School Code and this Part is contingent upon the submission and approval of a program plan and request for reimbursement in accordance with the requirements of Section 14C-12 of the School Code and this Section.
- b) Program Plan Submission and Approval
 - 1) Applications for program approval shall be submitted, on forms provided by the State Superintendent of Education, at least 60 calendar days prior to the start of the proposed initial or continuing program.
 - 2) The State Superintendent of Education will waive the requirement in subsection (b)(1) of this Section only when an application is accompanied by a statement of facts showing that the waiver will enable the district to begin serving a student or students sooner than would otherwise be the case.
 - 3) School districts shall be granted at least 45 calendar days to complete and submit applications to the State Superintendent of Education. A district's failure to submit a completed application by the date specified on the form will delay its receipt of reimbursement pursuant to subsection (c) of this Section.
 - 4) Applications for a Transitional Bilingual Education Program and/or a Transitional Program of Instruction must contain at least the following information:

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- A) The number of students to be served by grade or grade equivalent and language group in a full-time or part-time program.
- B) A summary description of the number and types of personnel who will provide services in the program.
- C) A description of the full-time and/or part-time program to be provided to the students identified pursuant to subsection (b)(4)(A) of this Section in relation to the applicable program standards set forth in Section 228.30 of this Part.
- D) Additional requirements for programs offering instruction in Spanish language arts in kindergarten and any of grades 1 through 12:
- i) For the 2010-11 school year only, a description of the steps the district will take to align its curriculum in the Spanish language arts with the standards required under Section 228.30(b)(4) this Part; and
- ii) For 2011-12 and each subsequent school year, a description of the methods by which the district will measure and monitor its students' progress with respect to the standards required under Section 228.30(b)(4) of this Part.
- E) Preschool
- i) For preschool programs that will screen students for English proficiency using a procedure other than the administration of the Pre-IPT, a description of the screening procedures to be used that provides evidence that these procedures are developmentally appropriate, supported by research and address: criteria to determine at what point performance on the screening instrument identifies a child as proficient in English; and screening instruments or activities related to and able to measure the child's English proficiency in at least the domains of listening and speaking to include vocabulary,

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comprehension, grammar and syntax, and verbal expression.

ii) A state-funded preschool program that does not submit an application for funding under this Part shall provide the information requested in subsection (b)(4)(E)(i) of this Section as part of its application submitted pursuant to 23 Ill. Adm. Code 235 (Early Childhood Block Grant).

F) A budget summary containing a projection of the program expenditures (e.g., instruction, support services, administration and transportation) and offsetting revenues for the upcoming fiscal year, and a detailed budget breakdown, including allowable program expenditures for which reimbursement is sought, other program expenditures, and total program costs.

~~G)E)~~ In the case of a TBE program, ~~an assurance that the signature of the chairperson of~~ the district's Bilingual Parent Advisory Committee established pursuant to Section 14C-10 of the School Code and Section 228.30~~(ce)~~(5) of this Part, ~~which shall be evidence that the Committee~~ has had an opportunity to review the application.

H) Inclusion of certifications, assurances and program-specific terms of the grant, as the State Board of Education may require, to be signed by the applicant that is a party to the application and submitted with the application.

- 5) Applications that, upon review by the State Superintendent of Education staff, are found to contain the information required pursuant to this Section shall be recommended for approval by the State Superintendent of Education. If the application is found to be incomplete, State Board staff will send a written notice to applicants requesting that they supply the needed information. In order to permit accurate allocation of funds for the program among eligible recipients, the State Superintendent may establish a deadline by which applicants must supply the requested information.
- 6) The State Superintendent of Education will approve applications that demonstrate compliance with Article 14C of the School Code and this Part, except that the State Superintendent shall invoke subsection (b)(5) of

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this Section with respect to any requested information that is missing from any application submitted for approval.

- c) Account of Expenditures and Reimbursement Procedures
- 1) An account of each district's expenditures pursuant to Article 14C of the School Code and this Part shall be maintained as required in Section 14C-12 of the School Code. Accounting procedures shall be in accordance with applicable requirements of 23 Ill. Adm. Code [100 \(Requirements for Accounting, Budgeting, Financial Reporting, and Auditing\)](#)~~110 (Program Accounting Manual)~~.
 - 2) The final annual report of district expenditures, which shall include the information specified in Section 14C-12 of the School Code, shall be submitted on forms provided by the State Superintendent of Education no later than July 31 of each year.
 - 3) School districts shall submit claims for reimbursement of programs approved in accordance with this Part on forms provided by the State Superintendent of Education and in accordance with Section 14C-12 of the School Code. No State reimbursement shall be available with respect to any student served for fewer than five class periods per week.
 - 4) In the event that funds appropriated by the General Assembly are insufficient to cover the districts' excess costs, the funds will be distributed on a pro rata basis and in accordance with the timelines specified in Section 14C-12 of the School Code.
 - 5) A request to amend a district's approved budget shall be submitted on forms provided by the State Superintendent of Education whenever a district determines that there is a need to increase or decrease an approved line item expenditure by more than \$1,000 or 20 percent, whichever is larger. A budget amendment must also be submitted for approval when a grantee proposes to use funds for allowable expenditures not identified in the approved budget.
 - 6) Budget amendment requests will be approved if the rationale provided for each amendment includes facts demonstrating that:

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- A) there is a need (e.g., a change in the number of students served or personnel needed); and
- B) the altered expenditures and their related program services will be in compliance with the requirements of Article 14C of the School Code and this Part.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 228.60 Evaluation Enforcement

- a) Each school district's compliance with the requirements of Article 14C of the School Code and this Part shall be evaluated ~~at least every three years~~ by State Board of Education staff, who shall use the criteria set forth in Article 14C of the School Code and this Part to determine compliance.
- b) Each school district's progress with regard to the academic achievement of students having limited English proficiency shall be evaluated annually in accordance with the provisions of 23 Ill. Adm. Code 1.40 (Adequate Yearly Progress)~~The recognition status of districts found to be in noncompliance with the requirements of Article 14C of the School Code and this Part will be evaluated in accordance with the provisions of Subpart A of 23 Ill. Adm. Code 1.~~

(Source: Amended at 34 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Early Childhood Block Grant
- 2) Code Citation: 23 Ill. Adm. Code 235
- 3)

<u>Section Numbers:</u> 235.20 235.30 235.120	<u>Proposed Action:</u> Amendment Amendment Amendment
--	--
- 4) Statutory Authority: 105 ILCS 5/1C-2
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments flow from two public acts, each of which is summarized below.

PA 95-793, effective January 1, 2009, requires school districts to provide bilingual education services required under Article 14C of the School Code to students enrolled in preschool programs established by the districts. The law makes explicit the expectation of agency staff that school districts offering preschool programs provide to any limited English proficient student appropriate services that will enable him or her to succeed in the preschool program. While programs for 3- to 5-year-olds funded under the Early Childhood Block Grant have always been required to assess a student's English proficiency and provide an individualized language program based on the results of that assessment, they have not been made to follow the more prescriptive provisions of Article 14C and administrative rules governing Transitional Bilingual Education (Part 228).

Confusion about staff's expectation that preschool programs meet the requirements of Article 14C has existed in the field, partly because preschool education programs are not a regular component of every school district's program. Rather districts have the option of whether to seek preschool funding under a competitive grant program. Additionally, even if a grant is awarded, the resulting program is designed to serve the neediest students of the district first, particularly those determined to be at risk of academic failure, rather than all students who wish to enroll. Further specifics about preschool programs' responsibilities regarding bilingual education services are explained in materials provided for proposed amendments to Part 228, which are being considered concurrently with this proposal.

The amendments proposed for Part 235 will require that information about bilingual education services be included in preschool grant applications submitted by school

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districts to ensure that appropriate services will be provided for any student who may be identified as having limited English proficiency.

PA 96-119, effective August 4, 2009, requires that Preschool for All Children programs enter into agreements with their local, federally funded Head Start programs. These agreements must address collaboration between the preschool program and Head Start about the services and programs that will be offered by each. Since the law is detailed regarding the content of the agreement and deadline for its submission to the agency, no changes to Part 235 are needed to implement its provisions. However, Section 235.120(b)(3)(B) is no longer needed since it establishes a funding priority for those applicants who choose to enter into partnership agreements with their Head Start programs.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking 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 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 90 days after the publication of this Notice to:

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

217/782-5270

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Comments may also be submitted electronically, addressed to:

rules@isbe.net

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: The need to amend Part 235 in response to PA 96-793 became apparent after the July 2009 publication of the regulatory agenda, and PA 96-119 took effect after the agenda's publication.

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 235

EARLY CHILDHOOD BLOCK GRANT

SUBPART A: PRESCHOOL EDUCATION AND
PREVENTION INITIATIVE PROGRAMS

Section

- 235.10 Purpose; Eligible Applicants
- 235.20 Application Procedure and Content for New or Expanding Programs
- 235.30 Additional Program Components for Preschool Education Proposals
- 235.40 Additional Program Components for Prevention Initiative Proposals
- 235.50 Proposal Review and Approval for New or Expanding Programs
- 235.60 Application Content and Approval for Continuation Programs
- 235.70 Terms of the Grant

SUBPART B: PRESCHOOL FOR ALL CHILDREN PROGRAM

Section

- 235.100 Purpose; Eligible Applicants
- 235.110 Application Procedure and Content for New or Expanding Programs
- 235.120 Proposal Review and Approval for New or Expanding Programs
- 235.130 Application Content and Approval for Continuation Programs
- 235.140 Terms of the Grant

SUBPART C: SOCIAL AND EMOTIONAL CONSULTATION SERVICES

Section

- 235.200 Implementation and Purpose; Eligible Applicants
- 235.210 Application Procedure and Content
- 235.220 Proposal Review and Approval of Proposals

235.APPENDIX A Illinois Early Learning Standards

235.APPENDIX B Illinois Birth to Three Program Standards

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AUTHORITY: Authorized by Section 1C-2 of the School Code [105 ILCS 5/1C-2] and implementing Sections 2-3.71, 2-3.71a and 2-3.89 of the School Code [105 ILCS 5/2-3.71, 2-3.71a and 2-3.89].

SOURCE: Adopted at 16 Ill. Reg. 10181, effective June 10, 1992; expedited correction at 16 Ill. Reg. 15186, effective June 10, 1992; amended at 26 Ill. Reg. 903, effective January 15, 2002; old Part repealed at 30 Ill. Reg. 4618 and new Part adopted at 30 Ill. Reg. 4620, effective February 28, 2006; emergency amendment adopted at 30 Ill. Reg. 11793, effective June 26, 2006, for a maximum of 150 days; emergency expired November 22, 2006; amended at 30 Ill. Reg. 19383, effective November 28, 2006; amended at 32 Ill. Reg. 13357, effective July 25, 2008; amended at 33 Ill. Reg. 4027, effective February 23, 2009; amended at 34 Ill. Reg. _____, effective _____.

**SUBPART A: PRESCHOOL EDUCATION AND
PREVENTION INITIATIVE PROGRAMS**

Section 235.20 Application Procedure and Content for New or Expanding Programs

Each applicant that is proposing a program that has not received funding in the year previous to the current application or is seeking additional funds to expand its currently funded program shall submit to the State Board of Education a proposal that includes the components specified in this Section. For purposes of this Section, an "expanded" program includes one in which the applicant is proposing to serve additional children and their families or to offer initiatives not provided under its currently funded program.

- a) Grants for new or expanded programs shall be offered in years in which the level of available funding is such that one or more new or expanded programs can be supported, along with those currently funded programs that seek continuation funding in accordance to Section 235.60 of this Part.
- b) When sufficient funding is available, the State Superintendent of Education shall issue one or more Requests for Proposals (RFP) specifying the information that applicants shall include in their proposals, informing applicants of any bidders' conferences, and requiring that proposals be submitted no later than the date specified in the RFP. The RFP shall provide at least 45 calendar days in which to submit proposals.
- c) All proposals submitted in response to an RFP shall include the following components:

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- 1) A cover page completed on a form supplied by the State Board of Education and signed by the school district superintendent or official authorized to submit the proposal or, in the case of a joint application, by the superintendent from each of the school districts and each authorized official of other eligible entities participating in the joint proposal.
- 2) For applicants other than public school districts, a description that includes the following:
 - A) the applicant's mission statement, organizational structure, and goals or policies regarding early childhood programs;
 - B) the applicant's existing competencies to provide early childhood education programs, to include a list of any early childhood accreditations that have been achieved; and
 - C) in the case of a joint application, the goals and objectives of the collaboration and a brief description of each partner's experience in providing services similar to those to be provided under the Early Childhood Block Grant program.
- 3) A description of the need for the program, which shall include:
 - A) current demographic or descriptive information regarding the community in which the families and children reside (including information on the prevalence of homelessness); and
 - B) the process that was used to determine the need for the program in the community in relation to other similar services that may be operating in the same geographic area.
- 4) A description of the population to be served, as defined in Section 235.10(a) of this Part, for each program to be funded under the Early Childhood Block Grant. This description shall include:
 - A) how the eligible population will be recruited;
 - B) the geographic area to be served; and

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- C) the estimated number of children and/or families to be enrolled.
- 5) A description of the procedures to be used to screen children and their families to determine their need for services. Results of the screening shall be made available to the program staff and parents of the children screened. All screening procedures shall include:
- A) criteria to determine at what point performance on the screening instrument indicates that children are at risk of academic failure as well as to assess other environmental, economic and demographic information that indicates a likelihood that the children would be at risk;
 - B) screening instruments/activities related to and able to measure the child's development in at least the following areas (as appropriate for the age of the child): vocabulary, visual-motor integration, language and speech development, English proficiency, fine and gross motor skills, social skills and cognitive development;
 - C) written parental permission for the screening;
 - D) parent interview (to be conducted in the parents' home language, if necessary), including at least the following:
 - i) for preschool education programs, a summary of the child's health history and social development; or
 - ii) for prevention initiative programs, information about the parents, such as age, educational achievement and employment history;
 - E) vision and hearing screening, in accordance with 77 Ill. Adm. Code 685 (Vision Screening) and 675 (Hearing Screening); and
 - F) where practicable, provision for the inclusion of program teaching staff in the screening process.

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- 6) A description of the parent education and training component that will be provided, to meet at least all of the requirements of Section 2-3.71a of the School Code.
- 7) A description of how the program will coordinate with other programs, as specified in the RFP, that are in operation in the same area and that are concerned with the education, welfare, health and safety needs of young children.
- 8) A description of the full-time and part-time professional and nonprofessional staff to be paid by the program, indicating that program administrators, early childhood teachers, counselors, psychologists, psychiatrists and social workers are appropriately qualified.
 - A) Teachers of children ages 3 to 5 years must hold an initial, initial alternative, standard, master, provisional, provisional alternative, resident teacher, or visiting international teacher early childhood certificate. (See Section 2-3.71(a)(3) of the School Code and 23 Ill. Adm. Code 1.Appendix A.)
 - B) By July 1, 2014, noncertificated staff employed to assist in instruction provided to children ages 3 to 5 years shall meet the requirements set forth in 23 Ill. Adm. Code 25.510(c).
 - C) Teachers of children ages 3 to 5 years who are assigned to a transitional bilingual program or a transitional program of instruction that is administered by a school district, either in an attendance center or a non-school-based facility, shall meet the requirements set forth in 23 Ill. Adm. Code 228.35 (Transitional Bilingual Education), as applicable.
- 9) A description of staff development assessment procedures and ongoing professional development activities to be conducted.
- 10) A description of the required program components, as set forth in either Section 235.30 or 235.40 of this Part.
- 11) Other information, as specified in the RFP, such as daily schedules (including the number of hours per day and days per week the program

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will operate), classroom locations, facility information (e.g., owner's name, terms of lease arrangement, size of classrooms and other areas to be used by the program), if applicable.

- 12) The plan for ensuring that the program provides either a snack, in the case of a half-day program, or a meal, in the case of a full-day program, for participating children.
- 13) Budget information, provided on forms supplied by the State Board of Education. The budget shall specify that no more than 5 percent of the total grant award shall be used for administrative and general expenses not directly attributed to program activities, except that a higher limit not to exceed 10 percent may be negotiated with an applicant that has provided evidence that the excess administrative expenses are beyond its control and that it has exhausted all available and reasonable remedies to comply with the limitation.
- 14) A description of how the applicant will ensure that no fees will be charged of parents or guardians and their children who are enrolled and participate in Early Childhood Block Grant programs.
- 15) A plan for evaluating the proposed programs and activities to be included in the Early Childhood Block Grant, which shall correspond to the applicable specifications set forth in the RFP.
- 16) Such certifications and assurances as the State Board of Education may require.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 235.30 Additional Program Components for Preschool Education Proposals

In addition to the requirements set forth in Section 235.20, applications for funding for preschool education programs and activities, as defined in Section 235.10(a)(1) of this Part, must provide:

- a) a description of how the comprehensive services to be provided are aligned with the Illinois Early Learning Standards as set forth in Appendix A of this Part;
- b) a description of how the proposed educational program is developmentally appropriate for each child, which shall:

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- 1) be accepted based upon evidence in the proposal that the results of the individualized assessment profile for each child will be the basis for determining that child's educational program;
 - 2) address the domains of development specified in Section 235.20(c)(5)(B) and how a language and literacy development program shall be implemented for each child based on that child's individual assessment; and
 - 3) address how student progress will be assessed and documented to ensure that the educational program meets the needs of the student and provides a system whereby that student's parents are routinely advised of their child's progress;
- c) the maximum number of children to be screened for program eligibility and, for those children that are screened, the maximum to be served by the educational program. The maximum number must be served in each classroom if, following completion of screening, the program has a waiting list of eligible children;
- d) the child/staff ratio for each classroom, which shall not exceed a ratio of 10 children to one adult, with no more than 20 children being served in each classroom; ~~and~~
- e) a description of how the program will ensure that those children who are age-eligible for kindergarten are enrolled in school upon leaving the preschool education program; ~~and-~~
- f) for school district applicants, a description of the steps to be taken to ensure that the provisions of Article 14C of the School Code [105 ILCS 5/Art. 14C] and 23 Ill. Adm. Code 228 (Transitional Bilingual Education) are met. This description shall include but not be limited to the following:
- 1) the process to be used to ensure that each student enrolled in the preschool program for the first time is administered the home language survey in accordance with 23 Ill. Adm. Code 228.15; and
 - 2) for programs not seeking bilingual funding under 23 Ill. Adm. Code 228 and not using the screening instrument prescribed under Section 228.10 of

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that Part, a description of the screening procedures to be used that provides evidence that these procedures are developmentally appropriate and supported by research and address the following areas:

- A) Criteria to determine at what point performance on the screening instrument identifies a child as proficient in English; and
- B) Screening instruments or activities related to and able to measure the child's English proficiency in at least the domains of listening and speaking to include vocabulary, comprehension, grammar and syntax, and verbal expression.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

SUBPART B: PRESCHOOL FOR ALL CHILDREN PROGRAM

Section 235.120 Proposal Review and Approval for New or Expanding Programs

In order to meet the funding priorities set forth in Section 2-3.71(a)(4.5) of the School Code, each proposal shall be reviewed using both quantitative and qualitative criteria.

- a) Proposals shall first be screened to identify those proposals that meet the criteria for each funding priority (see Section 235.110(a) of this Part). Proposals shall be separated into the following three categories:
 - 1) proposals serving primarily at-risk children,
 - 2) proposals serving primarily children whose families meet income guidelines, and
 - 3) all other proposals.
- b) Within each of the three categories set forth in subsection (a) of this Section, the proposals shall be reviewed and scored using the qualitative criteria set forth in Section 235.50(a) of this Part to determine which proposals provide evidence of a "qualified program". "Qualified programs" shall be those scoring at least 60 out of 100 total points.

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- 1) All qualified programs within the category set forth in subsection (a)(1) of this Section shall be funded before funding any qualified programs in the categories set forth in subsection (a)(2) or (a)(3) of this Section.
- 2) All qualified programs within the category set forth in subsection (a)(2) of this Section shall be funded before funding any qualified programs in the category set forth in subsection (a)(3) of this Section.
- 3) Within each category, priority for funding will be given to substantially similar proposals that:
~~A) serve children from a community with limited preschool programs or few resources promoting preschool education;~~
~~or B) include a signed partnership agreement with the local Head Start program.~~
- c) The selection of proposals for funding may be based in part on the need to make programs available on a statewide basis and/or provide resources to school districts and communities with varying demographic characteristics.
- d) The State Superintendent of Education shall determine the amount of individual grant awards. The final award amounts shall be based upon:
 - 1) the total amount of funds available for the Preschool for All Children program; and
 - 2) the resources requested in the top-ranked proposals, as identified pursuant to subsections (b) and (c) of this Section.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Procedures For Issuing Loans From the Water Pollution Control Loan Program
- 2) Code Citation: 35 Ill. Adm. Code 365
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
365.130	Amendment
365.220	Amendment
365.240	Amendment
365.340	Amendment
365.410	Amendment
365.430	Amendment
365.440	Amendment
365.620	Amendment
365.630	Amendment
365.APPENDIX A EXHIBIT A	Repeal
365.APPENDIX A EXHIBIT B	Repeal
- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Amendments: October 28, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Illinois Environmental Protection Agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: June 19, 2009; 33 Ill. Reg. 7957
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: Grammatical and punctuation changes were made as agreed upon with JCAR.

ENVIRONMENTAL PROTECTION AGENCY

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- 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 any emergency rulemaking currently in effect? Yes. An emergency rulemaking became effective June 2, 2009 and was published at 33 Ill. Reg. 8546.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: This rulemaking will amend the fixed loan rate to 0.00% in conjunction with the Agency's rules with respect to the American Recovery and Reinvestment Act of 2009. The amendments will also change the Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) requirements to Disadvantaged Business Enterprise (DBE) requirements.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Stefanie Diers, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

217/782-5544

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

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 365
PROCEDURES FOR ISSUING LOANS FROM THE WATER
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AUTHORITY: Implementing and authorized by Sections 19.1 through 19.9 of the Environmental Protection Act [415 ILCS 5/19.1 through 19.9].

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SOURCE: Adopted at 13 Ill. Reg. 7351, effective May 1, 1989; amended at 16 Ill. Reg. 15073, effective September 21, 1992; recodified at 19 Ill. Reg. 11450, effective August 11, 1995; amended at 20 Ill. Reg. 788, effective January 1, 1996; amended at 30 Ill. Reg. 15590, effective September 18, 2006; emergency amendment at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 15450, effective October 28, 2009.

SUBPART A: INTRODUCTION

Section 365.130 Definitions

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted under that Act (35 Ill. Adm. Code: Subtitle C) and the Clean Water Act (CWA), as amended (33 USC 1251 et seq.).

- b) For the purposes of this Part 365, the following definitions apply:

Addenda – Documents issued by the loan applicant after advertisement for bids, which modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications or corrections.

Agency – Illinois Environmental Protection Agency.

[ARRA – American Recovery and Reinvestment Act of 2009 \(Public Law 111-5\).](#)

Binding Commitment – A legal obligation between the Agency and a local government unit to provide financial assistance from the WPCLP to that local government unit, specifying the terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

Building Cost – The cost of erection of construction contract line items. Building costs do not include preliminary planning, engineering, architectural, legal, fiscal, administrative or contingency costs.

Capitalization Grant – The actual federal funds received by the Agency for deposit into the WPCLP as a result of the capitalization grant agreement

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with ~~the~~ USEPA.

Capitalization Grant Agreement – The agreement entered into each federal fiscal year between the Agency and ~~the~~ USEPA for the purpose of providing a grant to capitalize the WPCLP and enable the Agency to provide assistance for construction of wastewater treatment works.

Change Order – A written order by the loan recipient to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Compliance Project – A project which consists of construction, expansion, or upgrading of a wastewater treatment works necessary to meet State and federal requirements as specified in 35 Ill. Adm. Code: Subtitle C, and the CWA respectively.

Construction – Any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the wastewater treatment works, engineering, architectural, legal, fiscal or economic investigations, or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement or extension of wastewater treatment works, or the inspection or supervision of any of the foregoing items.

Contract Documents – The contract, including but not limited to advertisement for bids, information for bidders, bid, bid bond, agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications, and addenda.

Cost-Effectiveness Analysis – An analysis of the feasible wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations.

CWA – ~~The~~ Clean Water Act, as amended (33 USC 1251 et seq.).

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Dedicated Source of Revenue – The type of security and the basis of legal authorization which are dedicated by legislative enactment or other appropriate authority along with the applicable revenue source pledged for repayment and recorded in an account for the purpose of loan repayment to the WPCLP, which is sufficient to repay the principal and interest on the loan.

Design – All administrative, legal, and engineering tasks, subsequent to facilities plan approval but prior to advertisement for bid proposal, associated with receiving approval of a loan application. This shall include the following: surveys, designs, plans, working drawings, specifications, soil investigations and any other tests or process determinations required to establish design criteria, and development of user charge systems and sewer use ordinances.

Director – Director of the Illinois Environmental Protection Agency.

Fixed Loan Rate – One-half the market interest rate but not less than 2.50%.

Fund – The Water Revolving Fund as authorized by [415 ILCS 5/19.3], consisting of the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program.

Infiltration – Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connection, or manholes.

Inflow – Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash water, or drainage.

Initiation of Loan Repayment Period – The date in a loan agreement or amendment that establishes the beginning point of the loan repayment period.

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Initiation of Operation – The date specified by the loan agreement on which use of the project began operation for the purposes that it was planned, designed, and constructed.

Intended Use Plan – A plan which includes a description of the short and long term goals and objectives of the Fund, project categories, discharge requirements, terms of financial assistance and the communities to be served.

Interest Rate – Not less than one-fourth of the market interest rounded to the nearest .01%.

Loan Agreement – The contractual agreement between the Agency and the local government unit that contains the terms and conditions governing the loan issued from the WPCLP.

Loan Applicant – The local government unit that has applied for a loan from the WPCLP for construction of wastewater treatment works.

Loan Commitment Letter – The letter that is sent by the Agency to the loan applicant which reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The procedures for issuing loans from the WPCLP as set out in this Part 365.

Loan Recipient – A local government unit that has been provided a loan for construction of a wastewater treatment works from the WPCLP and that will own and be responsible for the operation and maintenance of the wastewater facilities.

Loan Support Rate – Not more than one-fourth of the market interest rate rounded to the nearest .01%.

Local Government Unit – A county, municipality, township, municipal or county sewerage or utility authority, sanitary district, public water district, improvement authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater

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treatment facilities or public water supply facilities or both [415 ILCS 5/19.2(g)].

Market Interest Rate – The mean interest rate of the 20 General Obligation Bond Buyer Index, from July 1 to June 30 of the preceding State fiscal year rounded to the nearest .01%.

Operating Agreement – The agreement between the Agency and ~~the~~ USEPA that establishes the policies, procedures and activities for the application and receipt of federal capitalization grant funds for capitalization of the WPCLP.

Principal – All disbursements, including interest and loan support accrued on the disbursements, that will be financed at the time the repayment schedule period begins.

Project – The activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

Project Priority List – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 366 (Procedures and Requirements for Determining Loan Priorities for Municipal Wastewater Treatment Works) that the Agency has determined are eligible to receive financial assistance from the WPCLP.

Responsible Bid – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract documents. Information required to demonstrate responsibility may be corrected or submitted after bid opening.

Responsive Bid – A bid that complies with all meaningful or material aspects of the contract documents. The bid must constitute a definite and unqualified offer to meet the material requirements of the contract documents including any terms that affect price, quality, quantity or time of delivery, or are clearly identified in the contract documents to be complied with at the risk of bid rejection for non-responsiveness. Bid defects resulting in a non-responsive bid may not be corrected after the bid opening.

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Source of Revenue – The revenues of the system, including accounts receivable and the proceeds that are sufficient to repay the principal and interest on the loan.

Subagreement – A written agreement between the loan recipient and another party and any tier of agreement thereunder to furnish services, supplies, or equipment necessary to complete the project for which a loan is provided, including construction contracts, contracts for personal and professional services and purchase orders.

Title VI – Title VI of the federal Clean Water Act (33 USC 1251 et seq.).

Treatment Works – Any devices and systems owned by a local government unit and used in the storage, treatment, recycling, and reclamation of sewerage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process for wastewater facilities. [415 ILCS 5/19.2(f)].

Useful Life – The estimated period during which a wastewater treatment works is intended to be operable.

USEPA – The United States Environmental Protection Agency.

User Charge – A charge levied on the users of a treatment works to produce adequate revenues for the operation, maintenance and replacement of the treatment works.

WPCLP – ~~The~~ Water Pollution Control Loan Program as authorized by Section 19.2 of the Environmental Protection Act [415 ILCS 5/19.2].

(Source: Amended at 33 Ill. Reg. 15450, effective October 28, 2009)

SUBPART B: FEDERAL REQUIREMENTS FOR THE
WATER POLLUTION CONTROL LOAN PROGRAM

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Section 365.220 Uses of the Water Pollution Control Loan Program

The Water Pollution Control Loan Program shall be used and administered by the Agency to provide assistance for the following purposes:

- a) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal;*
- b) *To make direct loans at or below market interest rates to any eligible local government unit to finance the construction of wastewater treatment works;*
- c) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible local government unit and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants;*
- d) *With respect to funds under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred on or after October 1, 2008;*
- e) *With respect to funds under the American Recovery and Reinvestment Act of 2009, to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for treatment works incurred on or after October 1, 2008;*
- f)e) *To make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred after March 7, 1985;*
- g)d) *To make direct loans at or below market interest rates for the implementation of a management program established under Section 319 of the Federal Water Pollution Control Act, as amended;*
- h)e) *To guarantee or purchase insurance for local obligations where such action would improve credit market access or reduce interest rates;*

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- ~~i)f~~ *As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State or any political subdivision or instrumentality thereof, if the proceeds of such bonds will be deposited in the Fund;*
- ~~j)g~~ *To finance the reasonable costs incurred by the Agency in the administration of the Fund; and*
- ~~k)h~~ *To transfer funds to the Public Water Supply Loan Program. [415 ILCS 5/19.3(b)]*

(Source: Amended at 33 Ill. Reg. 15450, effective October 28, 2009)

Section 365.240 Requirements for Loan Recipients under Title VI of the CWA

- a) Only local government units will be eligible for loans for wastewater treatment works projects.
- b) Loan projects must be on the Project Priority List.
- c) Loan projects must be consistent with any plans developed under ~~sections~~Sections 205(j), 208, 303(e), and 319 of the CWA.
- d) A dedicated source of revenue, sufficient to pay principal and interest when due, must be enacted and pledged by the loan recipient for repayment of the loan.
- e) Loan projects must meet ~~disadvantaged business enterprise requirements in accordance with 40 CFR 33.federal minority and women owned business requirements in accordance with Executive Orders 11625 and 12138 (Appendix A, Exhibits A and B of this Part).~~
- f) Loan projects must meet the applicable requirements of any other federal laws and authorities.
- g) Loans will be made at or below market interest rates.
- h) Loan accounts related to the project construction and the dedicated source of revenue will be maintained by the loan recipient consistent with generally accepted accounting standards in accordance with the American Institute of

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Certified Public Accountants Professional Standards.

- i) Loans will be fully amortized not later than 20 years after the earlier of the initiation of operation date or the initiation of the loan repayment period.

(Source: Amended at 33 Ill. Reg. 15450, effective October 28, 2009)

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE TO
COMPLY WITH LOAN PROCEDURES

Section 365.340 Waiver of Procedures

- a) Except as provided in subsection (b) or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan recipient, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce a recipient's ability to repay the loan to the Agency or will not, in general, weaken the financial position of the WPCLP. The waiver may be subject to such additional conditions the Director deems necessary.
- b) The following procedures will not be waived:
 - 1) Section 365.410 (Project Priority Determination) of this Part
 - 2) Section 365.440 (Fixed Loan Rate) of this Part
 - 3) Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Part
 - 4) Section 365.530 (State Environmental Review) of this Part
 - 5) Section 365.540 (Limitations on Awards for Individual Systems) of this Part
 - 6) Section 365.560 (Areawide Waste Treatment Management Planning) of this Part
 - 7) Section 365.620(d)(3) (Wage Provisions) of this Part

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- 8) Section 365.620(d)(4) (~~Disadvantaged Business Enterprise~~MBE/WBE Requirements) of this Part
 - 9) Section 365.620(d)(5) (Debarment ~~and/or~~ Suspension Certification) of this Part
 - 10) Section 365.630(a)(1) (~~Disadvantaged Business Enterprise~~MBE/WBE Requirements) of this Part
 - 11) Section 365.630(a)(4) (Debarment ~~and/or~~ Suspension Certification) of this Part
 - 12) Section 365.750 (Operation and Maintenance of the Project) of this Part
 - 13) Section 365.910 (Sewer Use Ordinance) of this Part
 - 14) Section 365.920 (User Charges) of this Part
 - 15) Section 365.940 (Dedicated Source of Revenue) of this Part
- c) Notwithstanding subsection (b)(14), Section 365.920(b)(1) of this Part can be waived for loans issued between October 1, 1994 and October 1, 2006.

(Source: Amended at 33 Ill. Reg. 15450, effective October 28, 2009)

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section 365.410 Project Priority Determination

- a) Financial assistance from the WPCLP will be provided only to local government units for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 366.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 366 after the receipt by the Agency of both loan pre-applications pursuant to Section 365.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved Facilities Planning pursuant to Section

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365.520 (Loan Applicant's Responsibilities During Facilities Planning) and Section 365.530 (State Environmental Review) of this Part. For projects represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.~~Subpart.~~

- c) Projects included on the Intended Use Plan will be selected from projects on the Project Priority List in priority order, provided the project has an approved facilities plan and is scheduled to initiate construction by March 31 of the subsequent federal fiscal year.
- d) Cash Flow Demand Funding
 - 1) The available funds for a project may be decreased by the Agency to reflect the amount of funds needed to meet cash flow demands for that project during the current funding cycle provided:
 - A) The project has been classified as service continuation or service expansion in accordance with 35 Ill. Adm. Code 366;
 - B) The primary purpose of the project is for wastewater treatment facilities;
 - C) The construction schedule exceeds one year; and
 - D) The project is on the current fiscal year's Intended Use Plan for at least 50% of the project cost.
 - 2) Any project that receives an adjustment to meet cash flow demands will have first opportunity for full funding in the subsequent fiscal year or years at the same interest rate.

(Source: Amended at 33 Ill. Reg. 15450, effective October 28, 2009)

Section 365.430 Financial Assistance Application and Approval

- a) In order to issue a loan commitment letter that reserves loan funds to a loan applicant for a maximum period of 90 days, the Agency must have received the following documents:

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- 1) A completed loan application form for financial assistance providing, at a minimum, the following items:
 - A) Legal name of applicant;
 - B) Address;
 - C) Authorized representative – name and title;
 - D) Cost estimate;
 - E) Amount requested for loan; and
 - F) Verification and signature;
- 2) An approved facilities plan in accordance with Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Part;
- 3) A Loan Program Certifications form that includes, at a minimum, the following:
 - A) The loan applicant must agree to pay all project costs not covered by the loan;
 - B) The loan applicant must certify that it has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project;
 - C) The loan applicant must certify that no unlawful or corrupt practice has taken place in the planning or design of the proposed project;
 - D) The loan applicant must certify that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project;

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- E) The loan applicant must certify that it is not barred from being awarded a contract or subcontract under the Illinois Procurement Code [30 ILCS 500]; and
 - F) The loan applicant must provide its correct Federal Employer Identification Number and certify that it is doing business as a governmental entity;
- 4) An executed inter-governmental agreement necessary for project implementation, where necessary;
 - 5) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C);
 - 6) A resolution, ordinance or legal document authorizing a representative of the loan applicant to sign loan application documents;
 - 7) A certification that the necessary project site, rights-of-way, easements and permits for construction of the project have been obtained and certification of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601);
 - 8) A resolution of intent to comply with the National Flood Insurance Act of 1968 (42 USC 4001-4127) in accordance with Section 365.950 (Floodplain Insurance) of this Part;
 - 9) An approved sewer use ordinance and user charge system in accordance with Sections 365.910 (Sewer Use Ordinance) and 365.920 (User Charges) of this Part;
 - 10) Documentation to support the loan applicant's ability to repay the loan in accordance with Sections 365.930 (Financial Capability) and 365.940 (Dedicated Source of Revenue) of this Part;
 - 11) The construction drawings and specifications, suitable for bidding purposes;

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- 12) A construction permit application and permit or "authorization to construct" from the Agency, pursuant to the provisions of 35 Ill. Adm. Code 309.154 and 309.202, whichever is applicable;
 - 13) A project completion schedule;
 - 14) An executed contract for design and construction related work in accordance with Section 365.630 (Contracts for Personal and Professional Services) of this Part;
 - 15) An EPA Form 4700-4, Compliance Report;
 - 16) An enacted ordinance authorizing the bonds, notes or other evidence of indebtedness to be delivered to the Agency;
 - 17) Proof of publication of the ordinance and any notice required by State statute, where applicable;
 - 18) A legal opinion from the loan applicant's legal counsel with respect to the validity and enforceability of the loan applicant's obligations and the absence of conflicts with other agreements, bonds or ordinances;
 - 19) Tax Exemption Certificate and Agreement; and
 - 20) Any other executed legal agreements necessary for project implementation.
- b) In addition to the items identified in subsection (a), the Agency must have received the following items before it will issue the actual Loan Agreement:
- 1) A certified copy of the published bid advertisement or advertisements;
 - 2) Any addenda issued by the loan applicant, if applicable;
 - 3) The bidder's bid bond or cashier's check for not less than 5% of the total bid;
 - 4) The low bidder's certificate of nonsegregated facilities showing compliance with 18 USC 1001;

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- 5) A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33MBE/WBE requirements of federal Executive Orders 11625 and 12138 (Appendix A, Exhibits A and B);
- 6) The submittal of bid tabulations;
- 7) An analysis of the bids and recommendations for the award of the bids;
- 8) A copy of the successful bid proposals;
- 9) The notice of the applicant's intent to award;
- 10) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C) is required from the prime contractor and the engineer; and
- 11) A Certification showing compliance with Section 33E-11 of the Illinois Criminal Code of 1961 [720 ILCS 5/33E-11].

(Source: Amended at 33 Ill. Reg. 15450, effective October 28, 2009)

Section 365.440 Fixed Loan Rate

- a) The fixed loan rate is comprised of an interest rate and a loan support rate. The fixed loan rate charged for a wastewater treatment works loan shall be a simple annual rate at one-half the market interest rate, but not less than 2.50%.
- b) Notwithstanding subsection (a), for the period of time that funds from the ARRA are available for loan commitment, the fixed loan rate charged for all loans from the WPCLP shall be a simple annual rate of 0.00%.

(Source: Amended at 33 Ill. Reg. 15450, effective October 28, 2009)

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section 365.620 Construction Contracts

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The following procedures shall apply to construction contracts (subagreements) awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured, and the notice to proceed.
- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 365.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:
 - 1) Evidence of advertising
The loan recipient shall submit to the Agency a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the WPCLP as set out in this Part 365, the Prevailing Wage Act [820 ILCS 130], the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order 11246, as amended (Appendix A, Exhibit D).
 - 2) Adequate bidding documents
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
 - A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (Drawings and specifications may be made available for inspection instead of being furnished.);
 - B) The terms and conditions of the contract to be awarded;
 - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;

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- D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the WPCLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
- E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan recipient;
- F) A copy of subsections (b)(2)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;
- G) By submission of the bid, each bidder and, in the case of a joint bid, each party to the joint bid certifies as to his or her own organization, that in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
 - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
 - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33 E-11 of the Illinois Criminal Code of 1961 [720 ILCS 5/33E-11]; and
- H) Each person signing the bid shall certify that:

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- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G); or
 - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that the persons determining the prices have not participated, and will not participate, in any action contrary to subsection (b)(2)(G), and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G).
- 3) Addenda to bidding documents
If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the loan applicant shall send written addenda to all firms who have obtained bidding documents in time to be considered prior to the bid opening. When appropriate, the time period for submission of bids shall be extended. All addenda to the bidding documents shall be submitted to the Agency for approval prior to the bid opening.
- 4) Award to the low, responsive, responsible bidder
 - A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award, and the loan applicant's letter of intent to award or the official minutes of board approval.
 - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan

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applicant.

- C) If the award is intended to be made to a firm that did not submit the lowest bid, prior to any award the loan applicant shall submit to the Agency a written statement explaining why each lower bidder was deemed not responsive or not responsible.

c) Negotiations of Contract Amendments (Change Orders)

- 1) Loan recipient responsibility
The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:
 - A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
 - B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
 - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
- 2) Changes in contract price or time
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
- 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
- 4) Agency review
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:

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- A) A description of the changed work;
 - B) The contractor's proposal itemizing the cost and time to complete the changed work;
 - C) The loan recipient's or engineer's estimate of the cost and time to complete the changes;
 - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and
 - E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) Each construction contract shall include the following provisions:
- 1) Audit; access to records:
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c) (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency, or any of their authorized representatives shall have access to the books, records, documents, and other evidence for purposes of inspection, audit, and copying. The contractor shall provide facilities for access and inspection.
 - B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall

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agree to include access to records as specified above in all his or her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.

- C) Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection (d)(1)(A). Where the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of the dispute, appeal, litigation, claim, or exception.
- F) The right of access will generally be exercised with respect to financial records under:
 - i) Negotiated prime contracts;
 - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
 - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
- G) The right of access will generally not be exercised with respect to a

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prime contract, subcontract, or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:

- i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
 - ii) If there is any indication that fraud, gross abuse, or corrupt practices may be involved in the award or performance of the contract or subcontract.
- 2) **Covenant against contingent fees.**
The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
 - 3) **Wage provisions**
The contractor shall pay prevailing wages in accordance with the Illinois Prevailing Wage Act [820 ILCS 130].
 - 4) **Disadvantaged business enterprise ~~MBE/WBE~~ requirements**
The contractor shall provide evidence, including, but not limited to, a copy of the advertisement or advertisements and the record of negotiation, that the contractor has taken affirmative steps in accordance with 40 CFR 33 to assure that disadvantaged business enterprises ~~federal Executive Orders 11625 and 12138 (Appendix A, Exhibits A and B), to assure that small, minority and women's businesses~~ are used when possible as sources of supplies, equipment, construction and services consistent with the provisions of the Agency's Operating Agreement with USEPA.
 - 5) **Debarment ~~and/or~~ suspension provisions**
The contract shall require the successful bidder or bidders to submit a "Certification Regarding Debarment, Suspension and Other Responsibility

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Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).

- 6) Nonsegregated facilities provisions
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) Subcontracts under construction contracts
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with:
 - 1) All applicable provisions of federal, State and local law;
 - 2) All provisions of this Part 365 regarding fraud and other unlawful or corrupt practices;
 - 3) All provisions of this Part 365 with respect to access to facilities, records and audit of records; and
 - 4) All provisions of subsection (d)(5) that require a "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
- f) Contractor Bankruptcy
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

(Source: Amended at 33 Ill. Reg. 15450, effective October 28, 2009)

Section 365.630 Contracts for Personal and Professional Services

All subagreements for personal and professional services for design or construction expected to

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exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
 - 1) Evidence, such as, but not limited to, a copy of the advertisement or advertisements and the record of negotiation in accordance with 40 CFR 33 federal Executive Orders 11625 and 12138 (Appendix A, Exhibits A and B), that affirmative steps have been taken to assure that disadvantaged business enterprises, small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services consistent with the provisions of the Agency's Operating Agreement with USEPA.
 - 2) An audit and access to records clause that provides as follows:
 - A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
 - B) Books, records, documents and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
 - C) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
 - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

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- E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 365.650 (Disputes) of this Subpart, litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception.
- 3) A covenant against contingent fees clause as follows:
"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."
- 4) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
- 5) A description of the scope and extent of the project work.
- 6) The schedule for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks.
- 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises~~small, minority and women's business~~ during the design service phase.
- c) If, at the time of contract execution, any of the elements required in this Section

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365.630 cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

(Source: Amended at 33 Ill. Reg. 15450, effective October 28, 2009)

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Section 365.APPENDIX A Executive Orders**Section 365.EXHIBIT A Executive Order 11625 (Repealed)**

~~October 14, 1971, 36 F.R. 19967~~

~~PRESCRIBING ADDITIONAL ARRANGEMENTS FOR DEVELOPING
AND COORDINATING A NATIONAL PROGRAM FOR
MINORITY BUSINESS ENTERPRISE~~

~~The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.~~

~~The Office of Minority Business Enterprise, established in 1969, greatly facilitated the strengthening and expansion of our minority enterprise program. In order to take full advantage of resources and opportunities in the minority enterprise field, we now must build on this foundation. One important way of improving our efforts is by clarifying the authority of the Secretary of Commerce (a) to implement Federal policy in support of the minority business enterprise program; (b) provide additional technical and management assistance to disadvantaged businesses; (c) to assist in demonstration projects; and (d) to coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.~~

~~NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:~~

~~Section 1. Functions of the Secretary of Commerce:~~

- ~~a) The Secretary of Commerce (hereinafter referred to as "the Secretary") shall—~~
- ~~1) Coordinate as consistent with law the plans, programs, and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.~~
 - ~~2) Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of minority business enterprises, and facilitate the coordination of~~

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~~the efforts of these groups with those of Federal departments and agencies.~~

- ~~3) Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the Nation in undertaking or promoting the establishment and successful operation of minority business enterprise.~~
 - ~~4) Within constraints of law and appropriations therefor, and according to his discretion, provide financial assistance to public and private organizations so that they may render technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special problems of minority business enterprises or otherwise to further the purposes of this order.~~
- b) The Secretary, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a), may—
- ~~1) With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this order.~~
 - ~~2) Require a coordinated review of all proposed Federal training and technical assistance activities in direct support of the minority enterprise program to assure consistency with program goals and to avoid duplication.~~
 - ~~3) Convene, for purposes of coordination, meetings of the heads of such departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this order.~~
 - ~~4) Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the purpose of proposing, evaluating and coordinating governmental and~~

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~~private activities in furtherance of the objectives of this order.~~

- ~~5) Confer with and advise officials of State and local governments.~~
- ~~6) Provide the managerial and organizational framework through which joint or collaborative undertakings with Federal departments or agencies or private organizations can be planned and implemented.~~
- ~~7) Recommend appropriate legislative or executive action.~~

~~Section 2. Advisory Council for Minority Enterprise.~~

- ~~a) The Advisory Council for Minority Enterprise (hereinafter referred to as "the Council"), established by Executive Order No. 11458 of March 5, 1969,¹¹ shall continue in existence under the terms of this order.~~
- ~~b) The Council shall be composed of members appointed by the President from among persons, including members of minority groups and representatives from minority business enterprises, who are knowledgeable in this field and who are dedicated to the purposes of this order. The members shall serve for a term of two years and may be reappointed.~~
- ~~c) The President shall designate one of the members of the Council as the Chairman of the Council.~~
- ~~d) The Council shall meet at the call of the Secretary.~~
- ~~e) The Council shall be advisory to the Secretary in which capacity it shall =~~
 - ~~1) Serve as a source of knowledge and information on developments in different fields and segments of our economic and social life which affect minority business enterprise.~~
 - ~~2) Keep abreast of plans, programs, and activities in the public and private sectors which relate to minority business enterprise, and advise the Secretary on any measures to better achieve the objectives of this order.~~
 - ~~3) Consider, and advise the Secretary, and such officials as he may designate, on problems and matters referred to the Council.~~

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- f) ~~For the purposes of Executive Order No. 11007 of February 26, 1962,¹² the Council shall be deemed to have been formed by the Secretary.~~
- g) ~~Members of the Council shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 USC 5701-5708) for persons in the Government service employed intermittently.~~
- h) ~~The Secretary shall arrange for administrative support of the Council to the extent necessary, including use of any gifts or bequests accepted by the Department of Commerce pursuant to law.~~

~~Section 3. Responsibilities of Other Federal Departments and Agencies.~~

- a) ~~The head of each Federal department and agency, or a representative designated by him, when and in the manner so requested by the Secretary, shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Secretary in the performance of his functions hereunder.~~
- b) ~~The head of each Federal department or agency shall, when so requested by the Secretary, designate his Under Secretary or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.~~
- e) ~~The officials designated under the preceding paragraph, when so requested, shall review and report to the Secretary upon the policies and programs of the minority business enterprise program, and shall keep the Secretary informed of all proposed budgets, plans and programs of his department or agency affecting minority business enterprise.~~
- d) ~~The head of each Federal department or agency, or a representative designated by him, shall, to the extent provided under regulations issued by the Secretary after consultation with the official designated in paragraph (b) above, report to the Secretary on any activity that falls within the scope of the minority business enterprise program as defined herein and in those regulations.~~
- e) ~~Each Federal department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority business enterprises and to support the program herein set forth, and shall~~

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~~cooperate with the Secretary of Commerce in increasing the total Federal effort.~~

~~Section 4. Reports.~~

~~The Secretary shall, no later than 120 days after the close of each fiscal year, submit to the President a full report of his activities hereunder during the previous fiscal year. Further, the Secretary shall, from time to time, submit to the President his recommendations for legislation or other action as he deems desirable to promote the purposes of this order. Each Federal department or agency shall report to the Secretary as hereinabove provided on a timely basis so that the Secretary may consider such reports for his report and recommendations to the President. Each Federal department or agency shall develop and implement systematic data collection processes which will provide to the Office of Minority Business Enterprise Information Center current data helpful in evaluating and promoting the efforts herein described.~~

~~Section 5. Policies and Standards.~~

~~The Secretary may establish such policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.~~

~~Section 6. Definitions. For purposes of this order, the following definitions shall apply:~~

- ~~a) "Minority business enterprise" means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish speaking Americans, American Indians, Eskimos, and Aleuts.~~
- ~~b) "State" means the State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.~~

~~Section 7. Construction.~~

~~Nothing in this order shall be construed as subjecting any function vested in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agency or office exclusively, or as abrogating or restricting any such function in any~~

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~~manner.~~

~~Section 8. Prior Executive Order.~~

~~Executive Order No. 11458 of March 5, 1969,¹³ is hereby superseded.~~

~~THE WHITE HOUSE
October 13, 1971~~

~~RICHARD NIXON~~

~~¹¹ 15 U.S.C.A. Section 631 noted.~~

~~¹² 5 U.S.C.A. Section 901 note.~~

~~¹³ 15 U.S.C.A. Section 631 note.~~

(Source: Repealed at 33 Ill. Reg. 15450, effective October 28, 2009)

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Section 365.APPENDIX A Executive Orders**Section 365.EXHIBIT B Executive Order 12138 (Repealed)**

May 18, 1979, 44 F.R. 29637

~~CREATING A NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY
AND PRESCRIBING ARRANGEMENTS FOR DEVELOPING, CO-
ORDINATING AND IMPLEMENTING A NATIONAL PROGRAM FOR
WOMEN'S BUSINESS ENTERPRISE~~

~~In response to the findings of the Interagency Task Force on Women Business Owners and congressional findings that recognize:~~

- ~~1. the significant role which small business and women entrepreneurs can play in promoting full employment and balanced growth in our economy;~~
- ~~2. the many obstacles facing women entrepreneurs; and~~
- ~~3. the need to aid and stimulate women's business enterprise;~~

~~By the authority vested in me as President of the United States of America, in order to create a National Women's Business Enterprise Policy and to prescribe arrangements for developing, coordinating and implementing a national program for women's business enterprise, it is ordered as follows:~~

~~1-1. Responsibilities of the Federal Departments and Agencies.~~

- ~~1-101. Within the constraints of statutory authority and as otherwise permitted by law:~~
- ~~a) Each department and agency of the Executive Branch shall take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system.~~
 - ~~b) Each department and agency shall take affirmative action in support of women's business enterprise in appropriate programs and activities including but not limited to:~~
 - ~~1) management, technical, financial and procurement assistance,~~

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- ~~2) business-related education, training, counseling and information dissemination, and~~
- ~~3) procurement.~~
- e) ~~Each department or agency empowered to extend Federal financial assistance to any program or activity shall issue regulations requiring support of women's business enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the ground of sex. For purposes of this subsection, Federal financial assistance means assistance extended by way of grant, cooperative agreement, loan or contract other than a contract of insurance or guaranty. These regulations shall prescribe sanctions for noncompliance. Unless otherwise specified by law, no agency sanctions shall be applied until the agency or department concerned has advised the appropriate person or persons of the failure to comply with its regulations and has determined that compliance cannot be secured by voluntary means.~~

~~1-102. For purposes of the Order, affirmative action may include, but is not limited to, creating or supporting new programs responsive to the special needs for women's business enterprise, establishing incentives to promote business or business-related opportunities for women's business enterprise, collecting and disseminating information in support of women's business enterprise, and insuring to women's business enterprise knowledge of and ready access to business-related services and resources. If, in implementing this Order, an agency undertakes to use or to require compliance with numerical set-asides, or similar measures, it shall state the purpose of such measure, and the measure shall be designed on the basis of pertinent factual findings of discrimination against women's business enterprise and the need for such measure.~~

~~1-103. In carrying out their responsibilities under Section 1-1, the departments and agencies shall consult the Department of Justice, and the Department of Justice shall provide legal guidance concerning these responsibilities.~~

~~1-2. Establishment of the Interagency Committee on Women's Business Enterprise.~~

~~1-201. To help insure that the actions ordered above are carried out in an effective manner, I hereby establish the Interagency Committee on Women's Business Enterprise (hereinafter called the Committee).~~

~~1-202. The Chairperson of the Committee (hereinafter called the Chairperson) shall be appointed by the President. The Chairperson shall be the presiding officer of the~~

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~~Committee and shall have such duties as prescribed in this Order or by the committee in its rules of procedure. The Chairperson may also represent his or her department, agency or office on the Committee.~~

~~1-203. The Committee shall be composed of the Chairperson and other members appointed by the heads of departments and agencies from among high level policy-making officials. In making these appointments, the recommendations of the Chairperson shall be taken into consideration. The following departments and agencies and such other departments and agencies as the Chairperson shall select shall be members of the Committee: the Departments of Agriculture; Commerce; Defense; Energy; Health, Education, and Welfare; Housing and Urban Development; Interior; Justice; Labor; Transportation; Treasury; the Federal Trade Commission; General Services Administration; National Science Foundation; Office of Federal Procurement Policy; and the Small Business Administration. These members shall have a vote. Nonvoting members shall include the Executive Director of the Committee and at least one but no more than three representatives from the Executive Office of the President appointed by the President.~~

~~1-204. The Committee shall meet at least quarterly at the call of the Chairperson, and at such other times as may be determined to be useful according to the rule of procedure adopted by the Committee.~~

~~1-205. The Administrator of the Small Business Administration shall provide an Executive Director and adequate staff and administrative support for the Committee. The staff shall be located in the Office of the Chief Counsel for Advocacy of the Small Business Administration, or in such other office as may be established specifically to further the policies expressed herein. Nothing in this Section prohibits the use of other properly available funds and resources in support of the Committee.~~

~~1-3. Functions of the Committee.~~

~~The Committee shall in a manner consistent with law:~~

~~1-301. Promote, coordinate and monitor the plans, programs and operations of the departments and agencies of the Executive Branch which may contribute to the establishment, preservation and strengthening of women's business enterprise. It may, as appropriate, develop comprehensive interagency plans and specific program goals for women's business enterprise with the cooperation of the departments and agencies.~~

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~~1-302. Establish such policies, definitions, procedures and guidelines to govern the implementation, interpretation and application of this order, and generally perform such functions and take such steps as the Committee may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.~~

~~1-303. Promote the mobilization of activities and resources of State and local governments, business and trade associations, private industry, colleges and universities, foundations, professional organizations, and volunteer and other groups toward the growth of women's business enterprise, and facilitate the coordination of the efforts of these groups with those of the departments and agencies.~~

~~1-304. Make an annual assessment of the progress made in the Federal Government toward assisting women's business enterprise to enter the mainstream of business ownership and to provide recommendations for future actions to the President.~~

~~1-305. Convene and consult as necessary with persons inside and outside government to develop and promote new ideas concerning the development of women's business enterprise.~~

~~1-306. Consider the findings and recommendations of government and private sector investigations and studies of the problems of women entrepreneurs, and promote further research into such problems.~~

~~1-307. Design a comprehensive and innovative plan for a joint Federal and private sector effort to develop increased numbers of new women-owned businesses and larger and more successful women-owned businesses. The plan should set specific reasonable targets which can be achieved at reasonable and identifiable costs and should provide for the measurement of progress towards these targets at the end of two and five years. Related outcomes such as income and tax revenues generated, jobs created, new products and services introduced or new domestic or foreign markets created should also be projected and measured in relation to costs wherever possible. The Committee should submit the plan to the President for approval within six months of the effective date of this Order.~~

~~1-4. Other Responsibilities of the Federal Departments and Agencies.~~

~~1-401. The head of each department and agency shall designate a high level official to have that responsibility for the participation and cooperation of that department or agency in carrying out this Executive order. This person may be the same person who is~~

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~~the department or agency's representative to the Committee.~~

~~1-402. To the extent permitted by law, each department and agency upon request by the Chairperson shall furnish information, assistance and reports and otherwise cooperate with the Chairperson and the committee in the performance of their functions hereunder. Each department or agency shall ensure that systematic data collection processes are capable of providing the Committee current data helpful in evaluating and promoting the efforts herein described.~~

~~1-403. The officials designated under Section 1-401, when so requested, shall review the policies and programs of the women's business enterprise program, and shall keep the Chairperson informed of proposed budget, plans and programs of their departments or agencies affecting women's business enterprise.~~

~~1-404. Each Federal department or agency, within constraints of law, shall continue current efforts to foster and promote women's business enterprise and to support the program herein set forth, and shall cooperate with the Chairperson and the Committee in increasing the total Federal effort.~~

~~1-5. Reports:~~

~~1-501. The Chairperson shall, promptly after the close of the fiscal year, submit to the President a full report of the activities of the Committee hereunder during the previous fiscal year. Further, the Chairperson shall, from time to time, submit to the President the Committee's recommendations for legislation or other action to promote the purposes of this Order.~~

~~1-502. Each Federal department and agency shall report to the chairperson as hereinabove provided on a timely basis so that the Chairperson and the Committee can consider such reports for the Committee report to the President.~~

~~1-6 Definitions:~~

~~For the purposes of this Order, the following definitions shall apply:~~

~~1-601. "Women-owned business" means a business that is at least 51 percent owned by a woman or women who also control and operate it. "control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.~~

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~~1-602. "Women's business enterprise" means a woman-owned business or businesses or the efforts of a woman or women to establish, maintain or develop such a business or businesses.~~

~~r1-603. Nothing in subsections 1-601 or 1-602 of this Section (1-6) should be construed to prohibit the use of other definitions of a woman-owned business or women's business enterprise by departments and agencies of the Executive Branch where other definitions are deemed reasonable and useful for any purpose not inconsistent with the purposes of this Order. Wherever feasible, departments and agencies should use the definition of a woman-owned business in subsection 1-601 above for monitoring performance with respect to women's business enterprise in order to assure comparability of data throughout the Federal Government.~~

~~1-7. Construction~~

~~Nothing in this Order shall be construed as limiting the meaning or effect of any existing Executive order.~~

~~THE WHITE HOUSE
May 18, 1979~~

~~JIMMY CARTER~~

(Source: Repealed at 33 Ill. Reg. 15450, effective October 28, 2009)

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- 1) Heading of the Part: Procedures for Providing Financial Assistance from the Water Pollution Control Loan Program under the American Recovery and Reinvestment Act of 2009
- 2) Code Citation: 35 Ill. Adm. Code 369
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
369.110	New Section
369.120	New Section
369.130	New Section
369.140	New Section
369.210	New Section
369.220	New Section
369.230	New Section
369.240	New Section
369.310	New Section
369.320	New Section
369.330	New Section
369.340	New Section
369.410	New Section
369.420	New Section
369.430	New Section
369.440	New Section
369.450	New Section
369.460	New Section
369.470	New Section
369.480	New Section
369.510	New Section
369.520	New Section
369.530	New Section
369.540	New Section
369.610	New Section
369.620	New Section
369.630	New Section
369.640	New Section
369.650	New Section
369.660	New Section
369.670	New Section
369.710	New Section

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369.720	New Section
369.730	New Section
369.740	New Section
369.750	New Section
369.810	New Section
369.820	New Section
369.830	New Section
369.910	New Section
369.920	New Section
369.930	New Section
369.940	New Section
369.950	New Section
369.1010	New Section
369.1020	New Section
369.1030	New Section
369.1110	New Section
369.1120	New Section
369.APPENDIX A EXHIBIT A	New Section
369.APPENDIX A EXHIBIT B	New Section
369.APPENDIX B	New Section

- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act. [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Rules: October 28, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Illinois Environmental Protection Agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: June 19, 2009; 33 Ill. Reg. 7960
- 10) Has JCAR issued a Statement of Objection to these rules? No

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- 11) Differences between proposal and final version: Grammatical and punctuation changes were made as agreed upon with JCAR.
- Section 369.520(i) – Changed the 2nd sentence to "The applicant shall publish the Notice in the newspaper of local record and allow 10 days for public comments.".
- Section 369.610(i) – In the 1st sentence, after "subagreements", added "greater than \$25,000".
- The new language makes the sections consistent with language found in 35 Ill. Adm. Code 664.
- 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 any emergency rulemaking currently in effect? Yes. An emergency rulemaking became effective 6/2/09 and was published at 33 Ill. Reg. 8589.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: This rulemaking addresses how the Agency will disburse monies received under the American Recovery and Reinvestment Act of 2009. This rulemaking establishes a fixed loan rate to 0.00% and a more streamlined approach for the loan application process to distribute the stimulus money to shovel-ready projects in accordance with the requirements of the American Recovery and Reinvestment Act of 2009.
- 16) Information and questions regarding these adopted rules shall be directed to:

Stefanie Diers, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

217/782-5544

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 369

PROCEDURES FOR PROVIDING FINANCIAL ASSISTANCE FROM THE WATER
POLLUTION CONTROL LOAN PROGRAM UNDER THE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

SUBPART A: INTRODUCTION

Section	
369.110	Purpose
369.120	Administration
369.130	Definitions
369.140	Incorporations by Reference

SUBPART B: FEDERAL REQUIREMENTS FOR THE
WATER POLLUTION CONTROL LOAN PROGRAM

Section	
369.210	Uses of the Water Pollution Control Loan Program
369.220	Agency Responsibilities under Title VI of the CWA and the American Recovery and Reinvestment Act of 2009
369.230	Requirements for Loan Recipients under Title VI of the CWA
369.240	Green Project Reserve

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE
TO COMPLY WITH LOAN PROCEDURES

Section	
369.310	Noncompliance with Loan Procedures
369.320	Stop-Work Order
369.330	Termination
369.340	Waiver of Procedures

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section	
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- 369.410 Project Priority Determination
- 369.420 Pre-Application for Financial Assistance and Identification of Projects to be Funded
- 369.430 Financial Assistance Application and Approval
- 369.440 Fixed Loan Rate
- 369.450 Refinancing
- 369.460 Limitation on Design Cost
- 369.470 Limitation of Financial Assistance
- 369.480 Principal Forgiveness

SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS

- Section
- 369.510 Loan Applicant's Responsibilities During Facilities Planning
- 369.520 State Environmental Review
- 369.530 Limitations on Awards for Individual Systems
- 369.540 Areawide Waste Treatment Management Planning

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

- Section
- 369.610 Requirements for Subagreements
- 369.620 Construction Contracts
- 369.630 Contracts for Personal and Professional Services
- 369.640 Compliance with Procurement Requirements for Construction Contracts
- 369.650 Disputes
- 369.660 Indemnity
- 369.670 Covenant Against Contingent Fees

SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT

- Section
- 369.710 Construction Initiation
- 369.720 Project Changes
- 369.730 Construction Engineering
- 369.740 Operation and Maintenance of the Project
- 369.750 Final Inspection

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SUBPART H: REQUIREMENTS APPLICABLE TO
ACCESS, AUDITING AND RECORDS

Section

- 369.810 Access
- 369.820 Audit and Records
- 369.830 Single Audit Act

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

Section

- 369.910 Sewer Use Ordinance
- 369.920 User Charges
- 369.930 Financial Capability
- 369.940 Dedicated Source of Revenue
- 369.950 Floodplain Insurance

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

Section

- 369.1010 Determination of Allowable Costs
- 369.1020 Use of Loan Funds and Payment of Unallowable Costs
- 369.1030 Disbursement of Loan Funds

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT

Section

- 369.1110 Loan Repayment to the Agency
- 369.1120 Delinquent Loan Repayments
- 369.APPENDIX A Executive Orders
 - 369.EXHIBIT A Executive Order 12549
 - 369.EXHIBIT B Executive Order 11246
- 369.APPENDIX B Loan Application Form

AUTHORITY: Implementing and authorized by Sections 19.1 through 19.9 of the Environmental Protection Act [415 ILCS 5/19.1 through 19.9].

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SOURCE: Adopted by emergency rulemaking at 33 Ill. Reg. 8589, effective June 2, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 15493, effective October 28, 2009.

SUBPART A: INTRODUCTION

Section 369.110 Purpose

- a) The Water Quality Act of 1987 (the 1987 Amendments) that amended the federal Water Pollution Control Act (33 USC 1251 et seq.) sets forth a schedule and mechanism for the transition from the federal level to the state and local level for responsibility of funding wastewater treatment facilities. Title VI of the 1987 Amendments creates a new authority that authorizes the United States Environmental Protection Agency (USEPA) to make grants to states to capitalize state water pollution control revolving funds. Title VI also establishes specific requirements for states for the development and operation of the state loan programs, some of which must be assumed by the local government unit as the recipient of a loan.
- b) Part 365 sets forth procedures to be used by the Illinois Environmental Protection Agency to operate the Water Pollution Control Loan Program (WPCLP), including the issuance of loans for the construction of wastewater treatment works as authorized by P.A. 85-1135, effective September 1, 1988 and amended by P.A. 90-121, effective July 17, 1997.
- c) The American Recovery and Reinvestment Act of 2009 (ARRA) provides a source of capitalization grants to the states to provide loans, as well as additional subsidization including forgiveness of principal, negative interest loans, and grants to eligible applicants for the construction of wastewater facilities. This Part 369 sets out procedures the Agency will use to provide financial assistance from the ARRA, which shall be administered through the WPCLP.

Section 369.120 Administration

- a) The WPCLP, an interest-bearing special fund, will be administered by the Agency as an instrumentality of the State of Illinois in accordance with the Operating and Capitalization Grant Agreements between the Agency and the USEPA in accordance with State and federal laws. All funds from the ARRA for the construction of wastewater facilities will be administered through the WPCLP.

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- b) Copies of forms that are required and sample language that can be used to satisfy the requirements of an ARRA financial application administered through the authority of the WPCLP can be obtained from the Illinois Environmental Protection Agency, Infrastructure Financial Assistance Section, 1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276, or found on the Agency's website at www.epa.state.il.us.
- c) The program requirements of the ARRA shall take precedent on projects receiving financial assistance from both the ARRA and the WPCLP.

Section 369.130 Definitions

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted under that Act (35 Ill. Adm. Code: Subtitle C) and the Clean Water Act (CWA), as amended (33 USC 1251 et seq.).
- b) For the purposes of this Part, the following definitions apply:

Addenda – Documents, issued by the loan applicant after advertisement for bids, that modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications or corrections.

Agency – Illinois Environmental Protection Agency.

ARRA – American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

Binding Commitment – A legal obligation between the Agency and a local government unit to provide financial assistance from the WPCLP to that local government unit, specifying the terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

Building Cost – The cost of erection of construction contract line items. Building costs do not include preliminary planning, engineering, architectural, legal, fiscal, administrative or contingency costs.

Capitalization Grant – The actual federal funds received by the Agency for

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deposit into the WPCLP as a result of the capitalization grant agreement with the USEPA.

Capitalization Grant Agreement – The agreement entered into each federal fiscal year between the Agency and the USEPA for the purpose of providing a grant to capitalize the WPCLP and enable the Agency to provide assistance for construction of wastewater treatment works.

Change Order – A written order by the loan recipient to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Compliance Project – A project that consists of construction, expansion or upgrading of a wastewater treatment works necessary to meet State and federal requirements, as specified in 35 Ill. Adm. Code: Subtitle C and the CWA, respectively.

Construction – *Any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the wastewater treatment works, engineering, architectural, legal, fiscal or economic investigations, or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement or extension of wastewater treatment works, or the inspection or supervision of any of the foregoing items.* [415 ILCS 5/19.2(d)]

Contract Documents – The contract, including but not limited to advertisement for bids, information for bidders, bid, bid bond, agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications and addenda.

Cost-Effectiveness Analysis – An analysis of the feasible wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations.

CWA – Clean Water Act, as amended (33 USC 1251 et seq.).

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Dedicated Source of Revenue – The type of security and the basis of legal authorization that are dedicated by legislative enactment or other appropriate authority along with the applicable revenue source pledged for repayment and recorded in an account for the purpose of loan repayment to the WPCLP, which is sufficient to repay the principal and interest on the loan.

Design – All administrative, legal and engineering tasks, subsequent to facilities plan approval but prior to advertisement for bid proposal, associated with receiving approval of a loan application. This shall include the following: surveys, designs, plans, working drawings, specifications, soil investigations and any other tests or process determinations required to establish design criteria, and development of user charge systems and sewer use ordinances.

Director – Director of the Illinois Environmental Protection Agency.

Energy Efficiency – The use of improved technologies and practices to reduce the energy consumption of water quality projects, including projects to reduce energy consumption or produce clean energy used by a treatment works.

Environmentally Innovative Projects – Projects that demonstrate new and/or innovative approaches to managing water resources in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced cost and projects that foster adaptation of water protection programs and practices to climate change.

Fixed Loan Rate – The fixed loan rate shall be 0.00% for loans issued from the funds provided by the ARRA.

Fund – The Water Revolving Fund as authorized by [415 ILCS 5/19.3], consisting of the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program.

Green Infrastructure – Includes a wide array of practices at multiple scales that manage and treat stormwater and that maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing and using

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stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale, green infrastructure consist of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

Infiltration – Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connection or manholes.

Inflow – Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash water, or drainage.

Initiation of Loan Repayment Period – The date in a loan agreement or amendment that establishes the beginning point of the loan repayment period.

Initiation of Operation – The date specified by the loan agreement on which use of the project began operation for the purposes that it was planned, designed and constructed.

Intended Use Plan – *A plan which includes a description of the short and long term goals and objectives of the Fund, project categories, discharge requirements, terms of financial assistance and the communities to be served.* [415 ILCS 5/19.2(e)]

Loan Agreement – The contractual agreement between the Agency and the local government unit that contains the terms and conditions governing the loan issued from the WPCLP.

Loan Applicant – The local government unit that has applied for a loan from the WPCLP for construction of wastewater treatment works.

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Loan Commitment Letter – The letter that is sent by the Agency to the loan applicant which reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The Procedures for Providing Financial Assistance from the Water Pollution Control Loan Program under the American Recovery and Reinvestment Act of 2009.

Loan Recipient – A local government unit that has been provided a loan for construction of a wastewater treatment works from the WPCLP and that will own and be responsible for the operation and maintenance of the wastewater facilities.

Local Government Unit – *A county, municipality, township, municipal or county sewerage or utility authority, sanitary district, public water district, improvement authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater treatment facilities or public water supply facilities or both.* [415 ILCS 5/19.2(g)]

Operating Agreement – The agreement between the Agency and the USEPA that establishes the policies, procedures and activities for the application and receipt of federal capitalization grant funds for capitalization of the WPCLP.

Principal – All disbursements that will be financed at the time the repayment schedule period begins.

Principal Forgiveness – A portion of the loan amount that does not have to be repaid (is forgiven) upon execution of the loan.

Project – The activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

Project Priority List – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 366 (Procedures and Requirements for Determining Loan Priorities for Municipal Wastewater Treatment Works) that the Agency has determined are eligible to receive financial assistance from the WPCLP.

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Responsible Bid – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract documents. Information required to demonstrate responsibility may be corrected or submitted after bid opening.

Responsive Bid – A bid that complies with all meaningful or material aspects of the contract documents. The bid must constitute a definite and unqualified offer to meet the material requirements of the contract documents, including any terms that affect price, quality, quantity or time of delivery, or are clearly identified in the contract documents to be complied with at the risk of bid rejection for non-responsiveness. Bid defects resulting in a non-responsive bid may not be corrected after the bid opening.

Source of Revenue – The revenues of the system, including accounts receivable and the proceeds that are sufficient to repay the principal on the loan.

Subagreement – A written agreement between the loan recipient and another party and any tier of agreement thereunder to furnish services, supplies or equipment necessary to complete the project for which a loan is provided, including construction contracts, contracts for personal and professional services and purchase orders.

Title VI – Title VI of the federal Clean Water Act (33 USC 1251 et seq.).

Treatment Works – *Any devices and systems owned by a local government unit and used in the storage, treatment, recycling, and reclamation of sewerage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process for wastewater facilities.* [415 ILCS 5/19.2(f)]

Useful Life – The estimated period during which a wastewater treatment

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works is intended to be operable.

USEPA –United States Environmental Protection Agency.

User Charge – A charge levied on the users of a treatment works to produce adequate revenues for the operation, maintenance and replacement of the treatment works.

Water Efficiency – use of improved technologies and practices to deliver equal or better services with less water.

WPCLP – Water Pollution Control Loan Program as authorized by Section 19.2 of the Environmental Protection Act [415 ILCS 5/19.2].

Section 369.140 Incorporations by Reference

- a) The following publications are incorporated by reference:
 - 1) American Institute of Certified Public Accountants Professional Standards (1996), 666 Fifth Avenue, New York, New York 10019.
 - 2) Operation of Wastewater Treatment Plants (1980), 2nd edition (three volumes) (California State University, Sacramento).
 - 3) Operation and Maintenance of Wastewater Collection Systems (1983), 1st edition (California State University, Sacramento).
- b) This Part 369 incorporates no later amendments or editions.

**SUBPART B: FEDERAL REQUIREMENTS FOR THE
WATER POLLUTION CONTROL LOAN PROGRAM****Section 369.210 Uses of the Water Pollution Control Loan Program**

The Water Pollution Control Loan Program shall be used and administered by the Agency to provide assistance for the following purposes:

- a) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal;*

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- b) *To make direct loans at or below market interest rates to any eligible local government unit to finance the construction of wastewater treatment works;*
- c) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below interest rates to any eligible local government unit and to provide additional subsidization to any eligible local government unit, including, but not limited to, forgiveness of principal, negative interest rates, and grants;*
- d) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred on or after October 1, 2008;*
- e) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for treatment works incurred on or after October 1, 2008;*
- f) *To make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred after March 7, 1985;*
- g) *To make direct loans at or below market interest rates for the implementation of a management program established under Section 319 of the Federal Water Pollution Control Act, as amended;*
- h) *To guarantee or purchase insurance for local obligations where such action would improve credit market access or reduce interest rates;*
- i) *As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State or any political subdivision or instrumentality thereof, if the proceeds of such bonds will be deposited in the Fund;*
- j) *To finance the reasonable costs incurred by the Agency in the administration of the Fund; and*

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- k) *To transfer funds to the Public Water Supply Loan Program.* [415 ILCS 5/19.3(b)]

Section 369.220 Agency Responsibilities under Title VI of the CWA and the American Recovery and Reinvestment Act of 2009

- a) The WPCLP shall be established in accordance with the requirements of Title VI prior to the receipt of the capitalization grant for deposit into the WPCLP.
- b) The Agency will prepare an Intended Use Plan (IUP) and negotiate an Operating Agreement with the USEPA that will be the basis for the Capitalization Grant Agreement. These documents establish the procedures, activities and assurances for operation of the WPCLP, including, but not limited to, the following:
- 1) Grant payments will be accepted in accordance with a payment schedule established jointly by the Agency and the USEPA;
 - 2) A listing and description of projects on the Project Priority List to be provided financial assistance and the terms of the financial assistance;
 - 3) Binding commitments for 100 percent of each quarterly federal grant payment must be made by the Agency within one year after the receipt of each payment;
 - 4) Funds as a result of the capitalization grants must first be used to assure maintenance of progress toward compliance with the enforceable deadlines, goals and requirements of the CWA;
 - 5) Loan award and disbursement procedures to document the loan recipient's compliance with Title VI requirements;
 - 6) The loan repayment period cannot exceed 20 years beyond the earlier of the initiation of operation date or the initiation of the loan repayment period;
 - 7) All repayments of loan principal shall be deposited into the WPCLP;
 - 8) Annual reporting to the USEPA on the Agency's progress toward meeting its goals and objectives;

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- 9) An annual audit of the WPCLP in accordance with the auditing procedures of the General Accounting Office (75 USC 31); and
- 10) The Agency shall act in accordance with the requirements established under the ARRA.

Section 369.230 Requirements for Loan Recipients under Title VI of the CWA

- a) Only local government units will be eligible for loans for wastewater treatment works projects and green infrastructure projects.
- b) Loan projects must be on the Project Priority List.
- c) Loan projects must be consistent with any plans developed under sections 205(j), 208, 303(e) and 319 of the CWA.
- d) A dedicated source of revenue, sufficient to pay principal and interest when due, must be enacted and pledged by the loan recipient for repayment of the loan.
- e) Loan projects must meet federal disadvantaged business enterprise requirements in accordance with 40 CFR 33.
- f) Loan projects must meet the applicable requirements of any other federal laws and authorities.
- g) Loans will be made at or below market interest rates.
- h) Loan accounts related to the project construction and the dedicated source of revenue will be maintained by the loan recipient consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- i) Loans will be fully amortized not later than 20 years after the earlier of the initiation of operation date or the initiation of the loan repayment period.

Section 369.240 Green Project Reserve

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To the extent there are sufficient eligible project applications, not less than 20 percent of the funds provided from the ARRA shall be for projects to address green infrastructure, water or energy efficiency, improvements or environmentally innovative activities.

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE TO
COMPLY WITH LOAN PROCEDURES

Section 369.310 Noncompliance with Loan Procedures

- a) In the event of noncompliance with any condition or obligation arising out of the loan, the Director may take any necessary action as provided by law or by the loan agreement against the loan recipient including, but not limited to, one or more of the following actions:
- 1) Commence legal action in a court of competent jurisdiction;
 - 2) Declare all amounts under the loan immediately due and payable, enforce any security, and recover all loan funds;
 - 3) Terminate the loan pursuant to Section 369.330 (Termination) of this Subpart;
 - 4) Suspend all or part of the project work pursuant to Section 369.320 (Stop-Work Order) of this Subpart;
 - 5) Reduce the amount of the loan by the amount of misused funds; or
 - 6) Unilaterally adjust the fixed loan rate of the loan agreement to the current market interest rate.
- b) No action shall be taken under this Section without notice to the loan recipient.
- c) In determining whether to take action, the Agency shall, at a minimum, consider mitigating or aggravating factors, including, but not limited to, the severity and number of the violations; whether the violation is a continuing one; whether the loan recipient can remedy the violation; and whether the loan recipient remains capable of complying with the approved project work.

Section 369.320 Stop-Work Order

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- a) In the event of any violation of this Part or non-compliance with the terms of the loan agreement, the Agency may, by written order, require the loan recipient to stop all or any part of the project work for a period of not more than 30 days after the date of the order, and for any further period to which the parties may agree. Any such order shall include a list of the project activities to which it applies. Upon receipt of a stop-work order, the loan recipient shall immediately comply with its terms and shall minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within 30 days after the date of the stop-work order, or within the period of any extension to which the parties have agreed, the Agency shall:
- 1) Cancel the stop-work order upon resolution of the violation or cause leading to that stop-work order; or
 - 2) Terminate the work covered by the stop-work order, as provided in Section 369.330(a) of this Subpart.
- b) If a stop-work order is canceled or the period of the order or any extension of that period expires, the loan recipient shall resume work. An adjustment may be made in the loan period, the project period, the loan amount, or any combination of these, and the loan amended accordingly, if the loan recipient asserts a written claim for the adjustment within 30 days after the end of the work stoppage.
- c) All costs that are incurred by the loan recipient after the receipt of a stop-work order, or during any extension of the stop-work order period to which the Agency and the loan recipient have agreed, shall be deemed unallowable costs unless otherwise authorized by the Agency in writing or authorized under the loan procedures.

Section 369.330 Termination

- a) **Loan Termination by the Agency**
The Agency, by written notice to the loan recipient, may terminate the loan in whole or in part. Cause for termination shall include, but not be limited to, failure by the loan recipient to comply with the terms and conditions of the loan. Upon loan termination, the loan recipient shall refund any unexpended loan funds to the State of Illinois to be deposited in the WPCLP, except for such portion as may be required to pay the allowable costs of materials and equipment furnished or

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services rendered under an enforceable contract prior to the effective date of the termination.

- b) **Project Termination by the Loan Recipient**
A loan recipient who wishes to terminate a project for which the loan has been provided must submit a written request to the Agency that documents good cause for the proposed termination. If the Agency agrees that there is good cause for termination of all or any portion of the project, it shall enter into a termination agreement with the loan recipient or unilaterally terminate the loan. If the Agency finds that the loan recipient has terminated the project without good cause, it shall declare the loan in default, and all loan funds previously paid to the loan recipient, together with interest on the loan, shall be returned to the State of Illinois in accordance with a schedule established by the Agency for deposit into the WPCLP. Good cause to terminate a loan project includes, but is not limited to:
- 1) Changes in economic circumstances within the loan recipient's service area; and
 - 2) Information that the approved treatment technology will not perform as originally anticipated.

Section 369.340 Waiver of Procedures

- a) Except as provided in subsection (b) or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan applicant, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce a applicant's ability to repay the loan to the Agency or will not, in general, weaken the financial position of the WPCLP. The waiver may be subject to such additional conditions the Director deems necessary.
- b) The following procedures will not be waived:
- 1) Section 369.410 (Project Priority Determination) of this Part
 - 2) Section 369.440 (Fixed Loan Rate) of this Part
 - 3) Section 369.510 (Loan Applicant's Responsibilities During Facilities

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Planning) of this Part

- 4) Section 369.520 (State Environmental Review) of this Part
- 5) Section 369.530 (Limitations on Awards for Individual Systems) of this Part
- 6) Section 369.540 (Areawide Waste Treatment Management Planning) of this Part
- 7) Section 369.620(d)(3) (Wage Provisions) of this Part
- 8) Section 369.620(d)(4) (Disadvantaged Business Enterprise Requirements) of this Part
- 9) Section 369.620(d)(6) (Debarment and Suspension Provisions) of this Part
- 10) Section 369.630(a)(1) (Disadvantaged Business Enterprise Requirements) of this Part
- 11) Section 369.630(a)(4) (Debarment and Suspension Certification) of this Part
- 12) Section 369.740 (Operation and Maintenance of the Project) of this Part
- 13) Section 369.910 (Sewer Use Ordinance) of this Part
- 14) Section 369.920 (User Charges) of this Part
- 15) Section 369.940 (Dedicated Source of Revenue) of this Part

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section 369.410 Project Priority Determination

- a) Financial assistance from the WPCLP/the ARRA will be provided only to local government units for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 366.

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- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 366 after the receipt by the Agency of both loan pre-applications pursuant to Section 369.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved facilities planning pursuant to Section 369.510 (Loan Applicant's Responsibilities During Facilities Planning) and Section 369.520 (State Environmental Review) of this Part. For projects represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.
- c) Projects included in the Intended Use Plan will be selected from projects on the Project Priority List in priority order, provided the project is scheduled to initiate construction by December 31, 2009.
- d) The available funds awarded for a project may be limited by the Agency to reflect the amount of funds needed to meet cash flow demands for that project during the current funding cycle or to meet the WPCLP/ARRA funding availability. Any project that receives an adjustment to meet cash flow demands or the WPCLP/ARRA funding availability may have an opportunity for additional funding in future funding cycles as money becomes available.

Section 369.420 Pre-Application for Financial Assistance and Identification of Projects to be Funded

- a) Every loan applicant shall submit to the Agency a signed and dated pre-application form that includes at a minimum the following items:
 - 1) Legal name of applicant;
 - 2) Address;
 - 3) Authorized representative – name and title;
 - 4) Project classification (35 Ill. Adm. Code 366);
 - 5) Project description;
 - 6) Discharge location point;

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- 7) Cost estimate; and
 - 8) Project schedule.
- b) Loan applicants seeking financial assistance must file a new pre-application annually.
 - c) A project with approved facility planning may be added to the Project Priority List at any time by the submission of a pre-application.
 - d) The Agency shall publish a list of the projects that are proposed for funding. These projects will be included in the Intended Use Plan.
 - e) After March 31 of each year, the Agency may bypass projects on the Intended Use Plan that cannot meet the schedule to initiate construction by March 31 of that year. The Agency will evaluate projects in priority order and may offer loan commitments to other projects on the Project Priority List in accordance with Section 369.430 (Financial Assistance Application and Approval) of this Subpart.

Section 369.430 Financial Assistance Application and Approval

- a) In order to receive a loan commitment letter for financial assistance under the ARRA, the following documentation shall be submitted by the loan applicant and approved by the Agency:
 - 1) Facilities plan that meets the requirements of Section 369.510 (Loan Applicant's Responsibilities During Facilities Planning) and 369.520 (State Environmental Review);
 - 2) Design documents, including plans and specifications, with a construction permit, if applicable;
 - 3) An enacted ordinance or other legally binding instrument authorizing the bonds, notes, security agreements or other evidence of indebtedness and an approved user charge system in accordance with Section 369.920 (User Charges) and documentation to support the loan applicant's ability to repay the loan in accordance with Section 369.930 (Financial Capability) and Section 369.940 (Dedicated Source of Revenue) of this Part;

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- 4) A loan application form (Appendix B);
 - 5) An EPA Form 4700-4, Compliance Report; and
 - 6) An executed contract for design and construction related work in accordance with Section 369.630 (Contracts for Personal and Professional Services) of this Part if financing is being requested for these specific costs.
- b) In addition to the items identified in subsection (a), the Agency must have received the following bid documentation prior to the issuance of the Loan Agreement:
- 1) A certified copy of the published bid advertisement(s);
 - 2) Any addenda by the loan applicant, if applicable;
 - 3) A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33;
 - 4) A copy of the bid tabulations;
 - 5) An analysis of the bids and recommendations for the award of the bids;
 - 6) A copy of the successful bid proposals;
 - 7) The notice of the applicant's intent to award; and
 - 8) A certification from the loan applicant that all other bid requirements have been satisfied, including bid bond requirements and other certifications as required by State and federal law.

Section 369.440 Fixed Loan Rate

The fixed loan rate shall be a simple annual rate of 0.00% for all wastewater facilities loans under the ARRA, administered through the WPCLP.

Section 369.450 Refinancing

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- a) Design costs, set forth in Section 369.460 (Limitation on Design Cost) of this Subpart, and bidding costs related to eligible construction contracts incurred prior to the award of the loan agreement are eligible for refinancing.
- b) Total eligible costs for projects that received a WPCLP Loan Agreement between October 1, 2008 and February 17, 2009 are eligible for refinancing to the ARRA program financial terms.

Section 369.460 Limitation on Design Cost

Allowable costs for design of the loan project will be limited to the actual cost incurred for design, up to a maximum percentage of the allowable as bid construction cost.

- a) For allowable as bid construction costs of \$500,000 or less, the design will be funded up to 15%;
- b) For allowable as bid construction costs of \$500,001 to \$2,000,000, the design will be funded up to 12%;
- c) For allowable as bid construction costs of \$2,000,001 to \$5,000,000, the design will be funded up to 10%;
- d) For allowable as bid construction costs of \$5,000,001 to \$10,000,000, the design will be funded up to 8%; and
- e) For allowable as bid construction costs of more than \$10,000,000, the design will be funded up to 7%.

Section 369.470 Limitation on Financial Assistance

The amount of financial assistance from the ARRA available to a loan applicant cannot exceed 50% of the total eligible project cost or \$10,000,000, whichever is less. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.

Section 369.480 Principal Forgiveness

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All financial assistance from the ARRA shall be in the form of a 0.00% interest loan with principal forgiveness of 50% of the total ARRA funded amount. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.

SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section 369.510 Loan Applicant's Responsibilities During Facilities Planning

- a) The loan applicant shall provide facilities planning, which shall consist of plans and studies that are directly related to the construction of wastewater treatment works, to maintain compliance with applicable State and federal requirements, as specified in 35 Ill. Adm. Code: Subtitle C and the CWA, while recognizing environmental and social conditions. The planning shall provide documentation on the need for the facilities for which loan assistance is being requested.
- b) If any information required to be furnished as part of a facilities plan has been developed separately, it shall be furnished and incorporated by reference in the facilities plan. Planning previously or collaterally accomplished under local, State or federal programs may be utilized to the extent applicable.
- c) The facilities plan shall be submitted to the Agency for approval. Where applicable, the applicant shall also submit drafts of any inter-governmental agreements or demonstrations of legal authority necessary to plan implementation.
- d) The facilities plan may include more than one construction project and may provide the basis for several subsequent construction projects. The Agency shall review any facilities plan that has previously served as the basis for a loan to determine if changes have occurred that require amendment of the plan for the subsequent project. If substantial changes have occurred that warrant revision or amendment of the plan as specified in Section 369.520 (State Environmental Review) of this Subpart, the loan applicant shall revise or amend and resubmit the plan for Agency review and approval in accordance with Section 369.520 (State Environmental Review) of this Subpart.
- e) Facilities planning shall include the following elements in sufficient detail to, at a minimum, comply with all applicable construction permit supporting data requirements of 35 Ill. Adm. Code 370.210:

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- 1) A complete description of the selected complete waste treatment system or systems of which the proposed wastewater treatment works is a part, identification of any existing violations of federal or State wastewater regulations and identification of the needs to be addressed by the proposed project.
- 2) A discussion of the technical, financial, managerial and environmental considerations that form the basis for the applicant's selection of the recommended project, including an evaluation regarding the elimination of infiltration and inflow where applicable. When appropriate to the project scope, the following issues shall be addressed:
 - A) The relationship of the nature, size and capacity of the selected alternative to the needs to be served, including reserve capacity;
 - B) Identification of current and proposed effluent discharge limitations and water quality standards for the proposed wastewater treatment works, as required by Title IV of the CWA and 35 Ill. Adm. Code: Subtitle C;
 - C) A discussion of the operational requirements of the selected alternative and provisions for the ultimate disposal of sludge materials from the wastewater treatment process;
 - D) An inventory of the relative environmental impacts of the selected alternative and a discussion of the measures that would be required during design and construction to mitigate or minimize negative environmental impacts; and
 - E) Adequate basis of design information for the selected alternative to confirm the reasonability of cost estimates.
- 3) A detailed description of the alternative selected for loan assistance, including preliminary engineering data, complete cost estimates for design and construction, one or more 8.5 by 11 inch site map(s) locating areas of construction and/or indirect impacts, and a projected schedule for completion. The engineering data shall include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit

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capacities, etc., sufficient to demonstrate that the proposed project will be designed in accordance with 35 Ill. Adm. Code 370.

- 4) Evidence of consultation with relevant federal, State, regional or local agencies, with documentation of project approval where required.
- 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for the operation and maintenance of the wastewater treatment system and repayment of the proposed loan amount, as well as the impact of these costs on the system users.

Section 369.520 State Environmental Review

- a) Prior to making a final determination on the acceptability of any facilities plan, the Agency shall undertake an environmental review. The Agency may categorically exclude certain classes of projects from a detailed environmental review and public hearing requirement when, by virtue of their limited scope, the projects have no potential for negative environmental impacts.
- b) The Agency shall not begin its environmental review until it has determined that the facilities plan conforms to the requirements of Section 369.510 (Loan Applicant's Responsibilities During Facilities Planning) of this Subpart, and that, based on the information available, all reasonable measures have been taken in the planning to avoid and mitigate negative environmental impacts.
- c) The scope of the Agency's environmental review shall include, but not be limited to, an assessment of the impacts of both the loan funded project and the overall planning on rare and endangered species, historic and cultural resources, prime agricultural land, air and water quality, recreational areas, wetlands, floodplains and other sensitive environmental areas. The review shall also assess the direct and indirect impacts of construction.
- d) For all projects requiring an environmental review, the Agency will assess the environmental impacts of the proposed project and prepare a written Preliminary Environmental Impacts Determination (PEID). The public will be given an opportunity to comment on the facilities plan and the Agency's environmental impacts assessment.
- e) The PEID shall be mailed to the loan applicant and other interested parties,

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inviting public comment. The loan applicant shall hold a public hearing on the plan and the Agency's PEID for the purpose of obtaining public comment. The public hearing will be held within 30 days after receipt of the Agency's PEID or within an alternative time period that is justified by the loan applicant and approved by the Agency. The loan applicant shall allow an additional 10 days from the date of the public hearing for the submission of written comments from the public.

- f) The time and place of the public hearing shall be conspicuously and adequately announced at least 10 days before the hearing. In addition, the Agency's PEID document shall be displayed at a convenient local site sufficiently prior to the hearing to obtain a level of public participation appropriate to the scope and impacts of the proposed project.
- g) The loan applicant shall provide the Agency with an accurate summary of all public comments received, together with any proposed amendments to the plan made in response to these comments.
- h) Upon receipt of this public hearing summary and after the expiration of the 10 day written comment period, the Agency shall issue:
 - 1) An unconditional approval of the plan (original or as amended); or
 - 2) A conditional approval of the plan with special conditions; or
 - 3) A disapproval of the plan based on evidence of significant negative environmental impacts for which appropriate mitigative measures have not been identified; or
 - 4) A determination of the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (42 USC 4332). The Agency may change its disapproval to approval or conditional approval based on the recommendations of the EIS.
- i) For projects categorically excluded from the environmental review process, the Agency shall provide to the applicant a Notice of Intent to Issue a Categorical Exclusion. The applicant shall publish the Notice in the newspaper of local record and allow 10 days for public comments. If no valid objection is raised to the Categorical Exclusion, the Agency shall issue an unconditional approval of

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the facilities plan. Should valid concerns be raised over potential environmental impacts, the Agency shall proceed with an environmental review under this Section or issue a conditional approval when the applicant incorporates mitigative measures that would clearly resolve the environmental concerns.

- j) Additions to the project scope or changes to the location of proposed construction activity shall require an amendment to an approved facilities plan. Where the Agency determines that the proposed changes will not alter the previous environmental impacts findings, it will approve planning amendments by letter. In other cases, additional environmental review and public comment may be required.
- k) Agency facilities planning determinations made in accordance with subsection (h) shall be subject to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

Section 369.530 Limitations on Awards for Individual Systems

- a) Construction involving privately owned residential wastewater treatment works must be part of the cost-effective solution in the approved facilities plan.
- b) Loan applicants must have legal authority to access all such privately owned systems at all reasonable times for such purposes as inspections, monitoring, building, operation, maintenance, rehabilitation and replacement.

Section 369.540 Areawide Waste Treatment Management Planning

The project shall be consistent with the provisions of sections 208 and 303(e) of CWA.

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section 369.610 Requirements for Subagreements

The intent of this Subpart is to provide for maximum open and free competition in the procurement of materials, goods and services for the construction projects funded from the WPCLP/the ARRA. Any procurement method, except as allowed under this Part that significantly minimizes open and free competition will be prohibited. The following procedures shall apply to subagreements:

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- a) **Local Preference**
Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements under the WPCLP/ARRA loans.
- b) **Profits**
Only fair and reasonable profits may be earned by contractors in subagreements under the WPCLP/ARRA loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 369.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.
- c) **Loan Recipient Responsibility**
The loan recipient shall be responsible for the administration and successful accomplishment of the project for which WPCLP/ARRA loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. Such an individual or firm shall be deemed the loan recipient's agent and shall be subject to all the provisions of the loan agreement, including this Part, that apply to the loan recipient.
- d) **Privity of Contract**
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts) or to any solicitation or request for proposals under those subagreements.
- e) **Subagreements shall:**
 - 1) Be directly related to the accomplishment of the loan recipient's approved work program;
 - 2) Be in the form of an executed written agreement (except for small purchases of \$25,000 or less);

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- 3) Be for monetary or in-kind consideration; and
 - 4) Not be in the nature of a grant or gift.
- f) Documentation
- 1) Procurement records and files for purchases in excess of \$25,000 shall include the following:
 - A) The basis for contractor selection;
 - B) The justification for lack of competition, if competition appropriate to the type of project work to be performed is required but not obtained; and
 - C) The basis for award cost or price.
 - 2) Procurement documentation as described in subsection (f)(1) shall be retained by the loan recipient or contractors for the period required by Section 369.820 (Audit and Records) of this Part.
- g) Subagreements shall only be awarded to persons or organizations that:
- 1) Have adequate financial resources for performance;
 - 2) Have the necessary experience, organization, technical qualifications and facilities, or a firm commitment, arrangement or ability to obtain these requirements;
 - 3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;
 - 4) Have a satisfactory record of integrity, judgment and performance;
 - 5) Have an adequate financial management system and audit procedure that is consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards;

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- 6) Maintain a standard of procurement in accordance with this Part;
 - 7) Maintain a property management system that provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
 - 8) Conform to the civil rights, equal employment opportunity (Appendix A, Exhibit B) and labor law requirements of this Part.
- h) Fraud and Other Unlawful or Corrupt Practices
- 1) The obtaining and administration of loans from the WPCLP/the ARRA, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.
 - 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices brought to its attention. The loan recipient shall advise the Agency immediately when any allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any matter.
- i) Negotiation of Subagreements
- All subagreements greater than \$25,000 shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Procurements may be negotiated by the loan recipient, if approved by the Agency, for the following reasons:
- 1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement);
or

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- 2) The aggregate amount of the contract to be competitively negotiated is allowed by State law; or
- 3) The materials or services to be procured are available from only one person or firm; or
- 4) The procurement is for personal or professional services, or for any services to be rendered by an educational institution; or
- 5) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or
- 6) The procurement is for materials or services for which the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

Section 369.620 Construction Contracts

The following procedures shall apply to construction contracts (subagreements) awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured, and the notice to proceed.
- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 369.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:
 - 1) Evidence of Advertising
The loan recipient shall submit to the Agency a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for providing financial assistance from the WPCLP under the ARRA as set out in this Part, the

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Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order 11246, as amended (Appendix A, Exhibit B). Bidders shall be notified that the procurement will be subject to the loan recipient's policy regarding the increased use of disadvantaged business enterprises, and that the bidders will be required to comply with section 1605 of the ARRA, which specifies that all iron, steel and manufactured goods used in the project are produced in the United States.

- 2) Adequate Bidding Documents
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
 - A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (Drawings and specifications may be made available for inspection instead of being furnished.);
 - B) The terms and conditions of the contract to be awarded;
 - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;
 - D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the WPCLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
 - E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan applicant;

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- F) A copy of subsections (b)(2)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;
- G) By submission of the bid, each bidder and, in the case of a joint bid, each party to the joint bid, certifies as to his or her own organization, that, in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
 - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
 - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33 E-11 of the Illinois Criminal Code of 1961 [720 ILCS 5/33E-11]; and
- H) Each person signing the bid shall certify that:
- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G); or
 - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that the persons determining the prices have not participated, and will not participate, in any action contrary to subsection (b)(2)(G), and as their agent shall so certify.

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He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G).

- 3) **Addenda to Bidding Documents**

If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the loan applicant shall send written addenda to all firms who have obtained bidding documents in time to be considered prior to the bid opening. When appropriate, the time period for submission of bids shall be extended. All addenda to the bidding documents shall be submitted to the Agency for approval prior to the bid opening.
 - 4) **Award to the Low, Responsive, Responsible Bidder**
 - A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award and the loan applicant's letter of intent to award or the official minutes of board approval.
 - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan applicant.
 - C) If the award is intended to be made to a firm that did not submit the lowest bid, prior to any award, the loan applicant shall submit to the Agency a written statement explaining why each lower bidder was deemed not responsive or not responsible.
- c) **Negotiations of Contract Amendments (Change Orders)**
- 1) **Loan Recipient Responsibility**

The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan

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recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:

- A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
- B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
- C) Maintain a summary of all negotiations and the engineer's independent cost estimate.

2) Changes in Contract Price or Time

The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).

3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

4) Agency Review

For each change order, the loan recipient shall submit to the Agency for approval the following documentation:

- A) A description of the changed work;
- B) The contractor's proposal, itemizing the cost and time to complete the changed work;
- C) The loan recipient's or engineer's estimate of the cost and time to complete the changes;
- D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and

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- E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) Required Construction Contract Provisions
Each construction contract shall include the following provisions:
- 1) Audit; Access to Records:
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c) (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency or any of their authorized representatives shall have access to the books, records, documents and other evidence for purposes of inspection, audit and copying. The contractor shall provide facilities for access and inspection.
 - B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.
 - C) Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
 - D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection (d)(1)(A). Where the audit concerns the contractor, the auditing

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agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of the dispute, appeal, litigation, claim or exception.
- F) The right of access will generally be exercised with respect to financial records under:
 - i) Negotiated prime contracts;
 - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
 - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
- G) The right of access will generally not be exercised with respect to a prime contract, subcontract or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:
 - i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
 - ii) If there is any indication that fraud, gross abuse or corrupt practices may be involved in the award or performance of the contract or subcontract.

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- 2) **Covenant Against Contingent Fees**
The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or, in its discretion, to deduct from the contract price or consideration, otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee.
 - 3) **Wage Provisions**
The contractor shall pay prevailing wages in accordance with the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor.
 - 4) **Disadvantaged Business Enterprise Requirements**
The contractor shall provide evidence, including, but not limited to, a copy of the advertisement(s) and the record of negotiation, that the contractor has taken affirmative steps in accordance with 40 CFR 33 to assure disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services, consistent with the provisions of the Agency's Operating Agreement with the USEPA.
 - 5) **American Iron, Steel and Manufactured Goods Provisions**
The contract shall require the successful bidder(s) to certify compliance with section 1605 of the ARRA, specifying that all iron, steel and manufactured goods used in the project are produced in the United States.
 - 6) **Debarment and Suspension Provisions**
The contract shall require the successful bidder(s) to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
 - 7) **Nonsegregated Facilities Provisions**
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) **Subcontracts Under Construction Contracts**

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The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with the following:

- 1) All applicable provisions of federal, State and local law;
 - 2) All provisions of this Part regarding fraud and other unlawful or corrupt practices;
 - 3) All provisions of this Part with respect to access to facilities, records and audit of records; and
 - 4) All provisions of subsection (d)(6) that require a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
- f) **Contractor Bankruptcy**
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

Section 369.630 Contracts for Personal and Professional Services

All subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
 - 1) **Disadvantaged Business Enterprise Requirements**
Evidence, such as, but not limited to, a copy of the advertisement and the record of negotiation in accordance with 40 CFR 33 that affirmative steps have been taken to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services consistent with the provisions of the Agency's Operating Agreement with

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the USEPA.

- 2) An audit and access to records clause that specifies as follows:
 - A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
 - B) Books, records, documents and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
 - C) Audits conducted pursuant to this subsection (a)(2) shall be in accordance with generally accepted auditing standards.
 - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
 - E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 369.650 (Disputes) of this Subpart, litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception;
- 3) A covenant against contingent fees clause as follows:

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"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee".

- 4) Debarment and Suspension Certification
A Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
 - 5) A description of the scope and extent of the project work.
 - 6) The schedule for performance and completion of the contract work, including, where appropriate, dates for completion of significant project tasks.
 - 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.
 - c) If, at the time of contract execution, any of the elements required in this Section cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

Section 369.640 Compliance with Procurement Requirements for Construction Contracts

- a) Loan Applicant Responsibility
The loan applicant shall be responsible for selecting the low, responsive and responsible bidder or other contractor in accordance with applicable requirements of State, federal and local laws and ordinances, as well as for the specific requirements of the loan agreement directly affecting procurement. The loan applicant shall also be responsible for the initial resolution of complaints based

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upon alleged violations. Any complaints made to the Agency concerning any alleged violation of law in the procurement of construction services or materials for a project involving construction work will be referred to the loan applicant for resolution. The loan applicant shall promptly determine each complaint on its merits, and shall allow the complainant and any other party who may be adversely affected to state in writing or at a conference the basis for its views concerning the proposed procurement. The loan applicant shall promptly furnish to the complainant and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering or legal opinion providing a justification for its determination.

b) Time Limitations

Complaints should be made as early as possible during the procurement process, preferably prior to the bid opening, to avoid disruption of the procurement process. The complaint shall be mailed (certified mail, return receipt requested), or otherwise delivered, no later than 5 working days after the complainant becomes aware of an alleged violation. If there is no agreement between the parties within 7 days following the loan applicant's response, unless all bids are rejected, the matter shall be resolved in accordance with subsection (c).

c) Remedies

All claims, counter-claims, disputes and other matters in question between the applicant and the contractor arising out of, or relating to, a subagreement or its breach shall be decided by arbitration if the parties agree, or in a court of competent jurisdiction within the State.

d) Deferral of Procurement Action

If the determination of a complaint by the loan applicant is adverse to the complainant, the loan applicant shall defer issuance of its solicitation or award or notice to proceed under the contract, as appropriate, for 7 days after mailing or delivery of the determination. If the determination (whether made by the loan applicant, the arbitrator or the court) is favorable to the complainant, the terms of the solicitation shall be revised or the contract shall be awarded, as appropriate, in accordance with the determination.

Section 369.650 Disputes

- a) Only the loan recipient may appeal to the Agency in its own name and for its own benefit, under this provision, with respect to its subagreements. Neither a

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contractor nor a subcontractor may prosecute an appeal under the disputes provision of a loan in its own name or interest.

- b) Any dispute arising under this loan that is not disposed of by agreement shall be decided by the Director, or his or her authorized representative, who shall render a decision in writing and mail or otherwise furnish it to the loan recipient. The decision of the Director shall be in accordance with this Part and shall be final and conclusive.
- c) The disputes clause shall not preclude the Director from considering questions of law in any decision.

Section 369.660 Indemnity

The loan recipient shall assume the entire risk, responsibility and liability for all loss or damage to property owned by the loan recipient, by the Agency or by third persons, and for any injury to, or death of, any persons (including employees of the loan recipient) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of the WPCLP/ARRA loan. The loan recipient shall indemnify, save harmless and defend the State of Illinois and the Agency from all claims for loss, damage, injury or death, whether caused by the negligence of the State of Illinois or the Agency, or their agents or employees or otherwise, consistent with the provisions of Section 1 of the Construction Contract Indemnification for Negligence Act [740 ILCS 35/1]. The loan recipient shall require that all its contractors and subcontractors agree in writing that they will look solely to the loan recipient for performance of the contract or satisfaction of all claims arising under the contract.

Section 369.670 Covenant Against Contingent Fees

The loan recipient shall warrant that no person or agency has been employed or retained to solicit or secure a WPCLP/ARRA loan upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul the loan in accordance with Section 369.310 (Noncompliance with Loan Procedures) of this Part or to deduct from the loan, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee.

**SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT****Section 369.710 Construction Initiation**

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Upon approval by the Agency of the loan applicant's financial assistance application in accordance with Section 369.430 (Financial Assistance Application and Approval) of this Part, and subject to the availability of funds, the Agency will issue the loan agreement and authorize the initiation of construction.

Section 369.720 Project Changes

- a) Prior approval of the Agency is required for any project change that may:
 - 1) Increase the amount of loan funds needed to complete the project;
 - 2) Alter the design or scope of the project;
 - 3) Extend any contract or loan completion date for the project;
 - 4) Alter the location, size, capacity or quality of any major item of equipment; or
 - 5) Alter the scope of the project by changing the methodologies or personnel to be used as agreed to at the time the loan was issued.
- b) The Agency will approve project changes that it determines are cost-effective and within the overall scope of the loan project, based on approved facilities planning.
- c) The loan recipient shall promptly notify the Agency, in writing, of all project changes. Failure to give timely notice of proposed project changes, or action by the loan recipient that is not consistent with the Agency's determination on those changes, may result in:
 - 1) Disallowance of loan participation for costs incurred that are attributable to the change; and
 - 2) Termination of the loan.

Section 369.730 Construction Engineering

The loan recipient shall provide construction engineering and project monitoring to assure that the construction substantially conforms with the approved plans and specifications.

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Section 369.740 Operation and Maintenance of the Project

In order for the Agency to approve the final inspection for the project, the loan recipient must certify that it has provided the following training and operation and maintenance documents:

- a) Training pertaining to the proper operation and maintenance of the equipment and process units included in the project.
- b) An operation and maintenance reference library that includes, but is not limited to, the following:
 - 1) Manufacturer's literature, shop drawings and warranties;
 - 2) The plans of record with valve indices for the equipment and process units included in the project. For mechanical wastewater treatment plants, the valve index shall include a listing of valve positions for each possible alternate flow configuration including by-passing of individual treatment processes and units and recommended configurations for emergency conditions that could reasonably be expected to occur; and
 - 3) A maintenance schedule for the equipment and process units included in the project.
- c) Training pertaining to the general operation of treatment plants or collection systems consisting of an operator self-study course such as "Operation of Wastewater Treatment Plant", 1980, 2nd edition (three volumes) or "Operation and Maintenance of Wastewater Collection System", 1983, 1st edition, California State University, Sacramento.

Section 369.750 Final Inspection

The loan recipient shall notify the Agency in writing within 30 days after completion of project construction and shall submit the final change order, along with the contractor's final costs, to the Agency. The plans of record shall be forwarded to the appropriate Agency regional office. The Agency shall schedule the final inspection within 60 days after receipt of the notice of completion, provided that all necessary change orders have been submitted and approved.

SUBPART H: REQUIREMENTS APPLICABLE TO

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ACCESS, AUDITING AND RECORDS

Section 369.810 Access

- a) The Agency and its designated representatives shall have access, during normal business hours and at any other time during which work is being performed, to the premises where any portion of the work for which the WPCLP/ARRA loan was provided is being performed. After final loan closing, Agency personnel or any authorized Agency representative shall have access to the project records as defined in Section 369.820 (Audit and Records) of this Subpart and to the project site during normal business hours, to the full extent of the loan recipient's right to access.
- b) Every contract entered into by the loan recipient for construction work, and every subagreement, shall provide Agency representatives with access to the work. The contractor or subcontractor shall provide facilities for such access and inspection. The contract or subagreement shall also provide that the Agency or any authorized representative shall have access to any books, documents, papers and records that are pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions.
- c) Failure by the loan recipient or any of its contractors or subcontractors to provide access, after 10 days written notice from the Agency, shall be cause for termination of the loan pursuant to Section 369.330 (Termination) of this Part, and refund to the State of Illinois for deposit into the WPCLP any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section shall repay any loan funds previously spent.

Section 369.820 Audit and Records

- a) The loan recipient shall maintain books, records, documents, reports and other evidentiary material, and accounting procedures and practices consistent with generally accepted government accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- b) For purposes of this Section, "records" shall include, but not be limited to:
 - 1) Documentation of the receipt and disposition by the loan recipient of all financial assistance received for the project, including both State financial

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assistance and any matching share or cost sharing; and

- 2) Documentation of the costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the loan has been provided.
- c) The loan recipient's facilities, or any facilities engaged in the performance of the WPCLP/ARRA loan project, and the loan recipient's records shall be subject to inspection and audit by the Agency or its authorized representative, at the times specified in Section 369.810 (Access) of this Subpart.
- d) The loan recipient shall preserve and make its records available to the Agency or its authorized representative for the following periods:
 - 1) For all costs associated with design and construction, for 3 years after final loan closing;
 - 2) For all other accounting records concerning the loan, for 3 years from the date of the transaction; and
 - 3) For any longer period required by law or by subsections (e) and (f).
- e) If the loan is completely or partially terminated, the records relating to the terminated work shall be preserved and made available for 3 years after any resulting final termination settlement.
- f) Records that relate to appeals under the "Disputes" clause in Section 369.650 (Disputes) of this Part, litigation or the settlement of claims arising out of the performance of the WPCLP loan project, or to project costs and expenses to which exception has been taken by the Agency or its authorized representatives, shall be retained until the appeals, litigation, claims or exceptions have been completed.
- g) Failure of the loan recipient or its contractors or subcontractors to make records available to the Agency as required by Section 369.810 (Access) of this Subpart after 10 days written notice shall be cause for termination of the loan, pursuant to Section 369.330 (Termination) of this Part, and for refund to the State of Illinois for deposit into the WPCLP of any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section

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shall repay any loan funds previously spent.

Section 369.830 Single Audit Act

The loan recipient shall comply with the provisions of the Single Audit Act of 1996 (31 USC 7501 et seq.).

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

Section 369.910 Sewer Use Ordinance

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's sewer use ordinance with enactment of the ordinance required prior to the first loan disbursement. The loan applicant shall demonstrate to the satisfaction of the Agency that a sewer use ordinance or other legally binding requirement will be enacted and enforced prior to the first loan disbursement in each jurisdiction served by the treatment works project. The ordinance shall prohibit any connections from inflow sources into the sanitary sewer portions of the sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed.
- b) The sewer use ordinance shall require:
 - 1) Pretreatment of any industrial wastes that would otherwise be detrimental to the wastewater treatment works or its proper and efficient operation and maintenance or will otherwise prevent entry of industrial wastes into the wastewater treatment works; and
 - 2) Compliance with 35 Ill. Adm. Code 310 (Pretreatment Programs).
- c) The sewer use ordinance shall prohibit the introduction of industrial waste into the sewer system until the requirements of Section 369.920 (User Charges) of this Subpart are met.

Section 369.920 User Charges

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's system of user charges. The user charge system must be enacted and enforceable before the first loan disbursement can be made.

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- b) The Agency shall approve the user charge system in accordance with the following criteria:
- 1) For the first year of operation of new facilities, operation, maintenance and replacement costs shall be based upon past experience for existing wastewater treatment works or some other rational method that can be demonstrated to be applicable.
 - 2) The loan recipient shall review user charges annually and revise the rates periodically to reflect actual wastewater treatment works operation, maintenance and replacement costs. The Agency may request a report on the status of the user charge system, including projected costs, actual costs, revenue generated and fund balances at any time.
 - 3) The user charge system shall generate sufficient revenue to offset the cost of all wastewater treatment works operation, maintenance and replacement required to be provided by the loan recipient.
 - 4) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authorizations. If the project is for a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving wastewater treatment services from the loan recipient shall have adopted user charge systems. The user charge systems shall also be incorporated in the appropriate municipal legislative enactments, intergovernmental or service agreements or other appropriate authorizations.
- c) Upon approval of a loan recipient's system of user charges, the implementation and maintenance of the approved system shall become a condition of the loan subject to Section 369.310 (Noncompliance with Loan Procedures) of this Part.
- d) The Agency or its authorized representative shall have access to all books, documents, papers and records of the loan recipient for the purpose of making audit, examination, excerpts and transcriptions in order to ensure compliance with subsection (b).

Section 369.930 Financial Capability

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- a) The loan applicant shall demonstrate to the Agency that it has the necessary legal, financial, managerial and institutional capability to:
 - 1) Construct, operate and maintain the project for the life of the wastewater treatment works;
 - 2) Retire the loan in accordance with the schedule to be contained in the loan agreement, including the execution of any necessary intergovernmental agreements, enactment of a system of user charges and any legislative enactments necessary to recover adequate capital costs to repay the loan; and
 - 3) Meet any covenants and requirements in the loan agreement.
- b) To demonstrate financial, managerial and institutional capability, the loan applicant shall, at a minimum, show that:
 - 1) It is empowered under law to own, operate and maintain a public wastewater treatment facility, including the facilities to be constructed under the loan;
 - 2) It has the necessary easements, titles, permits and intergovernmental agreements for loan project implementation, as identified in the facilities plan; and
 - 3) It has or will have the necessary qualified personnel to operate and maintain the facility.
- c) The financial capability demonstration shall be submitted to the Agency for approval and shall contain detailed project costs, existing and proposed operation, maintenance and replacement costs, existing and proposed local capital costs, and historical information over the past 3 years consisting of audited annual financial statements, bond ratings, number of users and tax rate levies.
- d) The Agency may suggest mitigative measures to improve the loan applicant's financial capability to undertake the project, including, but not limited to, acquisition of grant funding, reduction of project costs, additional or different sources of dedicated revenues, efforts to reduce the number of delinquent users, and changes to existing financial practices that may threaten generation of

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adequate revenues.

- e) The Agency may require a loan term of less than the 20 year maximum. In evaluating the appropriateness of alternative loan terms, the Agency shall consider such factors as the scope of the proposed project, the impacts of alternative loan terms on user fees, and the overall cost of the project.

Section 369.940 Dedicated Source of Revenue

- a) A source of revenue shall be dedicated and pledged to make the loan repayments. Prior to loan approval, the Agency shall review the proposed dedicated and pledged revenue source to assure that it will generate revenues adequate to make the loan repayments and will provide a continuing source of revenue adequate to make loan repayments for the term of the loan. If the source of revenue is pledged in a subordinate position to a revenue bond ordinance, the covenants regarding coverage and reserve for the revenue source shall be equivalent to those in the revenue bond ordinance. At a minimum, the reserve account shall be equal to the annual loan repayment amount funded within 2 years after the loan award.
- b) The necessary legislative enactments to dedicate and pledge the source of revenue must be in place before the Agency can make the first loan disbursement.
- c) The loan recipient shall maintain a separate account in its books to record the dedicated revenues for loan repayment.
- d) The loan recipient shall, for the term of the loan, review and adjust the dedicated source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient shall timely notify the Agency and submit to the Agency for approval all proposed changes to the dedicated source of revenue.
- e) Upon request, the loan recipient shall submit to the Agency a statement on the status of the account required by subsection (c) that contains the status of the dedicated revenue account, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review will be based on, but not limited to, ensuring that the dedicated source of revenue is legally authorized, generates sufficient revenue and is otherwise in accordance with this Part.
- f) In the event that the actual revenues fall short of the amount required to retire the

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loan, the Agency shall require the loan recipient to re-examine the dedicated revenue source and restructure it as necessary.

Section 369.950 Floodplain Insurance

- a) If the loan project includes insurable structures that will be located within a designated floodplain area as defined in the National Flood Insurance Act of 1968 (42 USC 4001-4127), the loan recipient shall furnish written evidence that it is participating in the National Flood Insurance Program or that the construction areas have received official exclusion from the flood insurance requirements by the Federal Emergency Management Agency.
- b) The loan recipient (or the construction contractor, as appropriate) shall acquire any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, and maintain the insurance for the entire useful life of the insurable structures.
- c) The amount of insurance required shall be the lesser of the total project cost, excluding facilities that are uninsurable under the National Flood Insurance Program, or the maximum limit of coverage made available to the loan recipient under the National Flood Insurance Act of 1968.
- d) The required insurance premium for the period of construction shall be an allowable project cost under Section 369.1010 (Determination of Allowable Costs) of this Part.

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

Section 369.1010 Determination of Allowable Costs

The loan recipient shall be paid, upon request, in accordance with Section 369.1030 (Disbursement of Loan Funds) of this Subpart, for all costs that are within the scope of the approved project, not to exceed the total amount of the loan, and that are determined to be allowable in accordance with the following criteria:

- a) **Allowable Project Costs**
All reasonable and necessary costs directly attributable to the design and construction of an eligible, loan assisted wastewater treatment works project that are not excluded from loan funding by law or non-waivable regulations.

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Categories of necessary costs include, but are not limited to, the following:

- 1) The direct purchase of materials, equipment and personal services specifically necessary for the completion of a loan funded project;
- 2) Professional and consultant services contracts necessary for design, bidding and construction of a loan funded project, except as elsewhere limited by this Part;
- 3) Costs under approved construction contracts; and
- 4) Costs for premiums for required flood insurance during the project construction period.

b) Ineligible Costs

Categories of costs that are ineligible for loan assistance, and are not subject to the "reasonable and necessary" test of allowability include, but are not limited to, the following:

- 1) Costs for preparing a facilities planning document;
- 2) Costs for basin or areawide planning;
- 3) Costs outside the scope of the approved facilities plan;
- 4) Site acquisition, including easement compensation, except in those instances where the land itself shall serve as the medium for treatment (e.g., land for spray irrigation of wastewater); and
- 5) Construction of any facilities that do not comply with the definition of a "treatment works" as contained in section 212 of the Clean Water Act.

c) Disputes Concerning Allowable Costs

The loan recipient shall seek to resolve any questions relating to cost allowability or allocation at the earliest opportunity. Final determinations by the Director concerning the allowability of costs shall be conclusive.

Section 369.1020 Use of Loan Funds and Payment of Unallowable Costs

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- a) Loan funds shall be expended solely for approved allowable costs incurred in the design and construction of the project.
- b) The loan recipient shall agree to pay the unallowable costs associated with the project, as well as all allowable costs that exceed the amount of the loan, and shall construct the project or cause it to be constructed to final completion in accordance with the plans and specifications and on the schedule approved by the Agency.
- c) The loan recipient shall commit itself to complete the construction of the operable wastewater treatment works.

Section 369.1030 Disbursement of Loan Funds

- a) Disbursements are subject to the appropriation of funds by the General Assembly and the availability of cash deposited into the WPCLP from drawdowns from the USEPA Automated Clearing House, State matching funds, repayments of existing loans, interest earnings on money in the WPCLP, and money deposited into the WPCLP from other sources.
- b) Disbursements shall be made as follows:
 - 1) After the receipt of a fully executed loan agreement, disbursement requests must be sent directly to the Agency. Actual disbursements shall be processed in accordance with the loan agreement.
 - 2) Disbursements will be processed based on costs incurred that are due and payable, as evidenced by invoices. The Agency may withhold any disbursement for a violation of the loan agreement conditions.
- c) The loan recipient shall make prompt payment to the contractor.
- d) The State share of any refunds, rebates, credits or other amounts (including any interest) accruing to or received by the loan recipient with respect to the project that are properly allocable to costs for which loan funds have been disbursed must be paid, minus any reasonable expenses incurred in securing these funds, to the State of Illinois for deposit in the WPCLP.
- e) Before the final principal amount of the loan can be established:

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- 1) The Agency shall conduct a final inspection and a project review to insure that all applicable loan conditions have been satisfied; and
 - 2) The loan recipient must submit to the Agency a final waiver from the contractor and a Certification of Payment that all bills have been paid.
- f) The loan recipient must also submit a release discharging the State of Illinois, and its officers, agents and employees, from all liabilities, obligations and claims arising out of the project work or under the loan, subject only to such exceptions specified in the release.
- g) Any use of loan funds at variance with this Part shall result in repayment of those loan funds to the State of Illinois for deposit into the WPCLP.

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT

Section 369.1110 Loan Repayment to the Agency

Loan repayment to the Agency shall be in accordance with the loan repayment provisions contained in the loan agreement.

- a) Principal forgiveness of 50% will be applied to the total amount of loan disbursements from ARRA funds. The loan repayment amount shall be calculated based upon 50% of the total amount of loan disbursements from ARRA funds.
- b) Loan repayments shall commence not later than 6 months after the initiation of the loan repayment period and shall be due semiannually unless the Agency determines that the dedicated source of revenue justifies an alternative repayment plan.
- c) After the initiation of the loan repayment period date in the loan agreement, the Agency shall set a principal amount and give the loan recipient an interim repayment schedule.
- d) After a final cost review of the project, the Agency shall establish the final principal amount and give the loan recipient a final repayment schedule.

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Section 369.1120 Delinquent Loan Repayments

- a) *In the event that a timely payment is not made by a loan recipient according to the loan schedule of repayment, the loan recipient shall notify the Agency in writing within 15 days after the payment due date. The notification shall include a statement of the reasons the payment was not timely tendered, the circumstances under which the late payments will be satisfied, and binding commitments to assure future payments. After receipt of this notification, the Agency shall confirm in writing the acceptability of the plan or take action in accordance with subsection (b) of this Section.*
- b) *In the event that a loan recipient fails to comply with subsection (a), the Agency shall promptly issue a notice of delinquency to the loan recipient which shall require a written response within 15 days. The notice of delinquency shall require that the loan recipient revise its rates, fees and charges to meet its obligations or take other specified actions as may be appropriate to remedy the delinquency and to assure future payments.*
- c) *In the event that the loan recipient fails to timely or adequately respond to a notice of delinquency, or fails to meet its obligations made pursuant to subsections (a) and (b) of this Section, the Agency shall pursue the collection of the amounts past due, the outstanding loan balance and the costs thereby incurred, either pursuant to the Illinois State Collection Act of 1986 [30 ILCS 210] or by any other reasonable means as may be provided by law, including the taking of title by foreclosure or otherwise to any project or other property pledged, mortgaged, encumbered or otherwise available as security or collateral. [415 ILCS 5/19.6]*

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Section 369.APPENDIX A Executive Orders**Section 369.EXHIBIT A Executive Order 12549**

February 18, 1986, 51 F.R. 6370

DEBARMENT AND SUSPENSION

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

Section 1.

- a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.
- b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.
- c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Section 2. To the extent permitted by law, Executive departments and agencies shall:

- a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.
- b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.

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- c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

Section 3. Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.

Section 4. There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.

Section 5. The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.

Section 6. The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

Section 7. The Director of the Office of Management and Budget shall report to the President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make such

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recommendations as are appropriate further to curb fraud, waste, and abuse.

THE WHITE HOUSE
February 18, 1986

RONALD REAGAN

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Section 369.APPENDIX A Executive Orders**Section 369.EXHIBIT B Executive Order 11246**EQUAL EMPLOYMENT OPPORTUNITY
EXECUTIVE ORDER 11246, AS AMENDED

Executive Order 11246 – Equal Employment Opportunity

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I – Nondiscrimination in Government Employment

Part II – Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A – Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

Subpart B – Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to

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employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event

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the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

- a) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
- b) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
- c) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute

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such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

Subpart C – Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

- a) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

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SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

- a) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D – Sanctions and Penalties

SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

- 1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
- 2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

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- 3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
- 4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
- 5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
- 6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.
- 7) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

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SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

Subpart E – Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III – Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the

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rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

- a) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.
- b) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

- a) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

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- b) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

Part IV – Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

- a) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by

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appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

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Section 369.APPENDIX B Loan Application Form

Applicant Information

L17# _____

1. Legal Name of Applicant: _____

2. Applicant Address: _____

Project Description: _____

Federal Taxpayer Identification Number: _____

Home Rule Non-Home Rule

3. Authorized Representative:

Name: _____ Title: _____

Phone: _____ Email: _____

4. Engineer:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

5. Attorney:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

6. Include detailed construction cost estimate in bid format as part of this application and summarize below:

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Construction	\$
	\$
	\$
Legal/Financial	\$
Design Engineering	\$
Construction Engineering	\$
Other	\$
Contingency	\$
	<hr/>
Total	\$

7. Amount requested for loan \$ _____

8. Loan repayment period requested (maximum term is 20 years): _____

20 Years

Other (____ number of years)

9. List any other proposed sources of funding in addition to loan request:

Source: _____ Amount: _____

Date Available: _____

10. Project Schedule (Indicate "complete" or anticipated date of completion as appropriate)

a) Approved Facilities Planning:

b) Plans and Specifications completed and submitted to Illinois EPA: _____

c) Illinois EPA Permit issued: _____

d) Approved Operation, Maintenance and Replacement Revenue System and Dedicated Source of Revenue: _____

e) Advertise for Bids: _____

f) Initiation of Construction: _____

g) Completion of Construction: _____

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**CERTIFICATION REGARDING PROJECT SITE,
RIGHTS-OF-WAY, EASEMENTS, AND PERMITS**

1. The applicant has investigated and ascertained the location of the site or sites, rights-of-way, and easements being provided for the facilities in its application for loan assistance. In my opinion, the applicant has a sufficient legal interest in the said site or sites, rights-of-way, and easements to permit the building of such facilities thereon and to permit the operation and maintenance of such facilities thereon during the estimated life of the facility by the applicant after the completion of construction.
2. The loan applicant has complied with the provisions of 49 CFR 24 as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601 et seq.).
3. The loan applicant has obtained all the necessary permits as indicated below:

<u>Type of Permit</u>	<u>Permit Number</u>	<u>Date Issued</u>
Army Corps of Eng. 404	_____	_____
IL Dept. of Trans.	_____	_____
County Highway	_____	_____
Other	_____	_____

Loan Program Certifications

- Whereas, the application provisions for loans from the Water Pollution Control Loan Program require that the loan applicant provide the following certifications and assurances:

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The loan applicant hereby agrees to pay all project costs not covered by the loan. If the project costs provided by the applicant exceed \$10,000, please provide the following information:

Amount to be provided by applicant \$ _____

Source of funds _____

- The loan applicant hereby certifies that is has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project.
- The loan applicant hereby certifies that no unlawful or corrupt practice has taken place in the planning or design of the proposed project.
- The loan applicant hereby certifies that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project.
- The loan applicant hereby certifies that it is not barred from being awarded a contract or subcontract under Section 10.1 of the Illinois Purchasing Act.

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant to the best of its knowledge and belief that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

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- d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

INTENT REGARDING NATIONAL FLOOD INSURANCE

Whereas application provisions for loans from the Water Pollution Control Loan Program require compliance with the National Flood Insurance Act 1968, as amended, and

Whereas the costs of securing and maintaining flood insurance are eligible for loan participation during the approved construction period, and

Whereas failure to secure flood insurance for eligible construction located in designated flood hazard areas will cause this construction to become ineligible for loan funds:

Now therefore, be it resolved that the _____ of _____ will cooperate and coordinate with the National Flood Insurance Program to acquire and maintain any flood insurance made available for Project L17# _____ for the entire useful life of the insurable construction pursuant to the Flood Insurance Act of 1968, as amended, and that it will secure said flood insurance for each insurable structure, as soon as said insurance is available and will notify the Illinois Environmental Protection Agency in writing that the National Flood Insurance requirement has been satisfied.

AUTHORIZATION OF A REPRESENTATIVE TO SIGN LOAN DOCUMENTS

Whereas, application provisions for loans from the Water Pollution Control Loan Program for construction of sewage treatment works require that the _____ of _____ authorize a representative to sign the loan application forms and supporting documents; therefore, be it resolved by the _____ of _____ that _____ is hereby authorized to sign all loan application forms and documents.

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I, _____ hereby verify that the above information is, to the best of my knowledge, true and correct.

Date: _____ Signed by: _____

(Authorized Representative)

Title: _____

Attested by: _____

Financial Information Requirements

Prior to issuance of a loan agreement, the applicant must demonstrate to the Agency that it possesses the necessary legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the treatment works and to retire the loan in accordance with the schedule to be contained in the loan agreement. The applicant must provide sufficient information for the Agency to determine that the applicant is financially capable and has pledged a dedicated revenue source that is adequate to retire the debt and meet any covenants and requirements in the loan agreement. This can be accomplished by development and the enactment of a new User Charge System or the demonstration that a system previously approved by the Agency has been adequately maintained, is being enforced and will continue to produce adequate revenues.

In order to provide guidance to potential loan recipients, this brief summary of the loan rules, our review procedures, and the information that must be submitted for the Agency's review is being provided along with the attached checklist.

Financial Capability

The Agency requires that the applicant demonstrate that it has the legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the wastewater treatment works and to retire the loan. The applicant must also demonstrate the ability to meet any covenants contained in the loan agreement.

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The Agency's review will be conducted using items submitted as part of the loan application including our review of the Dedicated Source of Revenue and the User Charge System. In addition, applicants must furnish the last fiscal year's audited financial statements. If we are unable to determine that the applicant is financially capable, the Agency may require additional financial data be submitted.

Dedicated Source of Revenue

The Agency requires that specific sources of revenue must be dedicated and pledged to make the loan repayments. Prior to the Agency's approval of the dedicated source(s) of revenue, the applicant must demonstrate that the revenue source will generate adequate revenues to make loan repayments for the term of the loan. The term of the loan will be specified in the loan agreement but shall not exceed 20 years from the initiation of operation date contained in the loan agreement. Additional points that must be considered during the development of the dedicated source of revenue are:

- The dedicated source of revenue is usually pledged by the loan applicant in the form of an adopted ordinance that pledges a specific and dedicated source of revenue for repayment of the loan. The adopted ordinance will in most cases pledge a very stable source of revenue, such as revenues of the system, in the form of a revenue bond. General obligation and alternate bond ordinances are also acceptable.
- In the case of revenue bonds, the Agency requires that debt service coverage requirements for the IEPA loan be equal to any outstanding senior debt that is payable from revenues of the system. If a sewer service charge is used, the sewer rate and rate ordinance must be adopted prior to the first disbursement. State law requires a 1.25 x coverage test for alternate bonds, and parity revenue bonds must also meet the covenants made to outstanding investors.
- The Agency requires that the applicant furnish a legal opinion concerning the acceptability of the ordinance and other elements of the debt instrument selected for repayment of the loan. This opinion must address the validity and enforceability of the loan recipient's obligations and the absence of conflicts with other agreements, bonds or ordinances. Retention of bond counsel is optional.

User Charge System

The applicant's User Charge System must generate adequate revenues to accommodate costs for operation, maintenance and replacement of the treatment works.

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If the applicant has a previously approved User Charge System, the Agency will review the system to ascertain that the system was enacted and has been maintained in accordance with the previous approval and will produce adequate revenues for the proposed project.

Applicant: _____

L17#: _____

FINANCIAL INFORMATION CHECKLIST

Please answer or submit information indicated, as appropriate.

A. Dedicated source of revenue

1. Home Rule Non-Home Rule
2. Type of loan instrument
 - a. General Obligation Debt
 - b. Alternate (double barreled) bonds with property tax levy that pledges an alternate revenue source of _____
 - c. Water Sewer Combined System Revenues – Senior Lien
 - d. Water Sewer Combined System Revenues – Subordinate Lien
3. Authority of applicant to issue debt
 - a. Home rule powers
 - b. Specific authorizing statute: _____ ILCS _____
 - c. Other (specify)
4. Copy of certified ordinance authorizing debt must be submitted along with existing ordinances if a subordinate lien is proposed. If this is a subordinate lien, the certified ordinance authorizing debt must have provisions for equivalent accounts and coverage.
5. Signed legal opinion with respect to the validity and enforceability of the applicant's obligations (bond ordinance) and the absence of conflicts with other agreements, bonds or ordinances.

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6. A detailed demonstration that the dedicated source of revenue will provide adequate revenues to repay the loan in accordance with the terms of the loan agreement, including meeting any covenants and requirements in the loan agreement.
7. Last fiscal year's audited annual statement.
8. Are other entities substantially benefiting (greater than 5%) from the project?
 Yes No
9. Submit copies of any service agreement with any substantial beneficiary.
 Attached N/A

EITHER

- B. User Charge System (assuming that an Agency approved user charge system is not in existence)
1. Submission of a detailed Operation, Maintenance and Replacement (OM&R) budget.
 2. Calculations to demonstrate how the rates and surcharges are calculated. The rates should be expressed in cost per unit of usage i.e., 1,000 gallons, 100 cubic feet, pounds of BOD and suspended solids or milligrams per liter of BOD and suspended solids as appropriate.
 3. Certified sewer use and rate ordinances.

OR

- C. Supplemental Review (assuming that an Agency approved User Charge System is in existence)
1. Submit a copy of the Sewer Use Ordinance and User Charge Ordinance originally approved.
 2. Submit any amendments made to the ordinances since their approval.

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- 3. Is the User Charge System generating sufficient revenue to recover the Operation, Maintenance and Replacement Costs? Yes No
If answered No, what corrective action is being taken?
- 4. Is the Sewer Use Ordinance being enforced? Yes No
If answered No, please explain.
- 5. Is an annual review of the Wastewater Service Charge being performed?
 Yes No

If answered No, please explain.
- 6. Will the project result in substantial changes to the costs for Operation, Maintenance and Replacement? Yes No
Will the project substantially alter the treatment process? Yes No
- 7. If either question in #6 is answered yes, please submit a proposed budget for the first year OM&R costs and a review of the wastewater service charges, along with appropriate revisions to the rate ordinance.

I hereby certify that the above information is, to the best of my knowledge, true and accurate.

(Authorized Representative)	(Date)
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(Clerk)	(Date)
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- 1) Heading of the Part: Procedures For Issuing Loans From the Public Water Supply Loan Program
- 2) Code Citation: 35 Ill. Adm. Code 662
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
662.130	Amendment
662.210	Amendment
662.310	Amendment
662.340	Amendment
662.410	Amendment
662.430	Amendment
662.440	Amendment
662.610	Amendment
662.620	Amendment
662.630	Amendment
662.935	Amendment
662.APPENDIX A EXHIBIT A	Repeal
662.APPENDIX A EXHIBIT B	Repeal
- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act. [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Amendments: October 28, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Illinois Environmental Protection Agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: June 19, 2009; 33 Ill. Reg. 7964
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: Grammatical and punctuation changes were made as agreed upon with JCAR.

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- 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 any emergency rulemaking currently in effect? Yes. An emergency rulemaking became effective June 2, 2009 and was published at 33 Ill. Reg. 8674.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: This rulemaking amends the fixed loan rate to 0.00% to work in conjunction with the Agency's rulemaking with respect to The American Recovery and Reinvestment Act of 2009. The amendments also change the Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) requirements to Disadvantaged Business Enterprise (DBE) requirements.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Stefanie Diers, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

217/782-5544

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

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 662
PROCEDURES FOR ISSUING LOANS FROM THE
PUBLIC WATER SUPPLY LOAN PROGRAM

SUBPART A: INTRODUCTION

Section	
662.110	Purpose
662.120	Administration
662.130	Definitions
662.140	Incorporations by Reference

SUBPART B: FEDERAL REQUIREMENTS FOR
THE PUBLIC WATER SUPPLY LOAN PROGRAM

Section	
662.210	Uses of the Public Water Supply Loan Program
662.220	Agency Responsibilities Under the Federal Safe Drinking Water Act

SUBPART C: LIABILITIES AND REMEDIES FOR
FAILURE TO COMPLY WITH LOAN PROCEDURES

Section	
662.310	Noncompliance with Loan Procedures
662.320	Stop-Work Order
662.330	Termination
662.340	Waiver of Procedures

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section	
662.410	Project Priority Determination
662.420	Pre-Applications for Financial Assistance and Identification of Projects to be Funded
662.430	Financial Assistance Application and Approval

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662.440	Fixed Loan Rate
662.450	Refinancing
662.460	Limitation on Design Cost
662.470	Limitation on Loan Amount
662.480	Loans to Privately Owned Community Water Supplies

SUBPART E: PROJECT PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section	
662.510	Loan Applicant's Responsibilities During Project Planning
662.520	State Environmental Review

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section	
662.610	Requirements for Subagreements
662.620	Construction Contracts
662.630	Contracts for Personal and Professional Services
662.640	Compliance with Procurement Requirements for Construction Contracts
662.650	Disputes
662.660	Indemnity
662.670	Covenant Against Contingent Fees

SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT

Section	
662.710	Construction Initiation
662.720	Project Changes
662.730	Construction Engineering
662.740	Operation and Maintenance of the Project
662.750	Final Inspection

SUBPART H: REQUIREMENTS APPLICABLE TO
ACCESS, AUDITING, AND RECORDS

Section	
662.810	Access
662.820	Audit and Records

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662.830 Single Audit Act

SUBPART I: FINANCIAL AND MANAGERIAL CAPACITY

Section

662.910 Operation, Maintenance and Replacement Revenue System
662.920 Financial Capability
662.930 Dedicated Source of Revenue for Local Government Units
662.935 Source of Revenue and Security for Privately Owned Community Water Supplies
662.940 Floodplain Insurance

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

Section

662.1010 Determination of Allowable Costs
662.1020 Use of Loan Funds and Payment of Unallowable Costs
662.1030 Disbursement of Loan Funds

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT

Section

662.1110 Loan Repayment to the Agency
662.1120 Delinquent Loan Repayments

662.APPENDIX A Executive Orders

662.EXHIBIT A Executive Order 11625 ([Repealed](#))
662.EXHIBIT B Executive Order 12138 ([Repealed](#))
662.EXHIBIT C Executive Order 12549
662.EXHIBIT D Executive Order 11246

AUTHORITY: Implementing and authorized by Sections 19.1 through 19.9 of the Illinois Environmental Protection Act [415 ILCS 5/19.1 through 19.9].

SOURCE: Emergency rule adopted at 21 Ill. Reg. 10091, effective July 17, 1997, for a maximum of 150 days; emergency expired on December 13, 1997; adopted at 22 Ill. Reg. 3782, effective February 10, 1998; amended at 24 Ill. Reg. 16245, effective November 1, 2000; emergency amendment at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 15575, effective October 28, 2009.

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SUBPART A: INTRODUCTION

Section 662.130 Definitions

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted thereunder.
- b) For the purposes of this Part, the following definitions apply:

Addenda – Documents issued by the loan applicant after advertisement for bids, which modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications or corrections.

Agency – Illinois Environmental Protection Agency.

[ARRA – The American Recovery and Reinvestment Act of 2009 \(Public Law 111-5\).](#)

Billed Customers – The ~~number of~~ customers receiving a bill who are responsible for paying for [water services](#)~~the proposed improvements~~.

Binding Commitment – A legal obligation between the Agency and a local government unit or privately owned community water supply to provide financial assistance from the Public Water Supply Loan Program to that local government unit or privately owned community water supply, specifying the terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

Building Cost – The cost of erection of construction contract line items. Building costs do not include preliminary planning, engineering, architectural, legal, fiscal, administrative or contingency costs.

Capitalization Grant – The actual federal funds received by the Agency for deposit into the PWSLP as a result of the capitalization grant agreement with the USEPA.

Capitalization Grant Agreement – The agreement entered into each federal fiscal

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year between the Agency and the USEPA for the purpose of providing a grant to capitalize the PWSLP and enable the Agency to provide assistance for construction of public water supply facilities.

Change Order – A written order by the loan recipient to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Construction – Any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the public water supply facilities; engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement or extension of public water supply facilities, or the inspection or supervision of any of the foregoing items.
[415 ILCS 5/19.2(d)]

Contract Documents – The contract, including but not limited to advertisement for bids, information for bidders, bid, bid bond agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications, and addenda.

Dedicated Source of Revenue – The type of security and the basis of legal authorization which are dedicated by legislative enactment or other appropriate authority along with the applicable revenue source pledged for repayment and recorded in an account for the purpose of loan repayment to the PWSLP, which is sufficient to repay the principal and interest on the loan.

Design – All administrative, legal, and engineering tasks, subsequent to project plan approval but prior to advertisement for bid proposal, associated with receiving approval of a loan application. This shall include the following: surveys, designs, plans, working drawings, specifications, soil investigations and any other tests or process determinations required to establish design criteria, and development of user charge systems.

Director – Director of the Illinois Environmental Protection Agency.

Fixed Loan Rate – One-half the market interest rate but not less than 2.50%.

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Fund – The Water Revolving Fund authorized by 415 ILCS 5/19.3, consisting of the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program.

Health Hazard Determination – A health hazard determination exists when concentrations of regulated contaminants, in a water supply, or concentrations of contaminants not otherwise regulated, exceed health effects standards published in U.S. Environmental Protection Agency (USEPA) Health Advisories, or by the Illinois Department of Public Health or by the Centers for Disease Control and Prevention or which otherwise pose an immediate threat to public health.

Initiation of Loan Repayment Period – The date in a loan agreement or amendment that establishes the beginning point of the loan repayment period.

Initiation of Operation – The date specified by the loan agreement on which use of the project began operation for the purposes that it was planned, designed and constructed.

Intended Use Plan – A plan which includes a description of the short and long term goals and objectives of the PWSLP, project categories, terms of financial assistance, communities and population benefitted. [415 ILCS 5/19.2(e)]

Interest Rate – Not less than one-fourth of the market interest rate rounded to the nearest .01%.

Loan Agreement – The contractual agreement between the Agency and the local government unit or privately owned community water supply which contains the terms and conditions governing the loan issued from the PWSLP.

Loan Applicant – A local government unit or privately owned community water supply that has applied for a loan from the PWSLP for construction of public water supply facilities.

Loan Commitment Letter – The letter that is sent by the Agency to the loan applicant which reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The procedures for issuing loans from the Public Water

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Supply Loan Program as set out in this Part 662.

Loan Recipient – A local government unit or privately owned community water supply which has been provided a loan for construction of public water supply facilities from the PWSLP and which will own and be responsible for the operation and maintenance of the community water supply facility.

Loan Support Rate – Not more than one-fourth of the market interest rate rounded to the nearest .01%.

Local Government Unit – A county, municipality, township, municipal or county sewerage or utility authority, sanitary district, public water district, improvement authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater treatment facilities or public water supply facilities or both. [415 ILCS 5/19.2(g)]

Market Interest Rate – The mean interest rate of the 20 General Obligation Bond Buyer Index, from July 1 to June 30 of the preceding State fiscal year rounded to the nearest .01%.

Maximum Contaminant Level (MCL) – The maximum permissible level of a contaminant in water that is delivered to any user of a public water system.

| Operating Agreement – The agreement between the Agency and [the](#) USEPA that
| establishes the policies, procedures and activities for the application and receipt of
| federal capitalization grant funds for capitalization of [the](#) PWSLP.

Principal – All disbursements, including interest and loan support accrued on the disbursements, that will be financed at the time the repayment schedule period begins.

Privately Owned Community Water Supply – An investor-owned water utility, if under Illinois Commerce Commission regulation and operating as a separate and distinct water utility; a not-for-profit water corporation, if operating specifically as a water utility; and a mutually owned or cooperatively owned community water system, if operating as a separate water utility. [415 ILCS 5/19.2]

Project – The activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

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Project Priority List – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 663: Subpart B (Procedures for Calculating the Loan Priority Index) which the Agency has determined are eligible to receive financial assistance from the PWSLP.

PWSLP – The Public Water Supply Loan Program as authorized by Section 19.2 of the Environmental Protection Act [415 ILCS 5/19.2].

Responsible Bid – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract documents. Information required to demonstrate responsibility may be corrected or submitted after bid opening.

Responsive Bid – A bid that complies with all meaningful or material aspects of the contract documents. The bid must constitute a definite and unqualified offer to meet the material requirements of the contract documents including any terms that affect price, quality, quantity or time of delivery, or are clearly identified in the contract documents to be complied with at the risk of bid rejection for non-responsiveness. Bid defects resulting in a non-responsive bid may not be corrected after the bid opening.

SDWA – The federal Safe Drinking Water Act, as amended (42 USC 300f).

Source of Revenue – The revenues of the system, including accounts receivable and the proceeds that are sufficient to repay the principal and interest on the loan.

Subagreement – A written agreement between the loan recipient and another party and any tier of agreement thereunder to furnish services, supplies, or equipment necessary to complete the project for which a loan was provided, including contracts for personal and professional services and purchase orders.

Treatment Technique Requirement – An enforceable procedure developed by USEPA when it is not economically or technologically feasible to ascertain the level of a contaminant. Public water supplies must follow this procedure and treat their drinking water supplies according to USEPA specifications to ensure the contaminant is controlled.

Useful Life – The estimated period during which a public water supply facility is

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intended to be operable.

USEPA – The United States Environmental Protection Agency.

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

SUBPART B: FEDERAL REQUIREMENTS FOR
THE PUBLIC WATER SUPPLY LOAN PROGRAM**Section 662.210 Uses of the Public Water Supply Loan Program**

- a) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal;*
- b) *To make direct loans at or below market interest rates to any eligible local government unit or to any eligible privately owned community water supply to finance the construction of public water supplies;*
- c) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal; to make direct loans at or below interest rates to any eligible local government unit or to any eligible privately owned community water supply, and to provide additional subsidization to any eligible local government unit or to any eligible privately owned community water supply, including, but not limited to, forgiveness of principal, negative interest rates, and grants;*
- d) *To make direct loans at or below market interest rates to any eligible local government unit or to any eligible privately owned community water supply to finance the construction of public water supplies; to buy or refinance the debt obligation of a local government unit for costs incurred on or after October 1, 2008;*
- e) *To buy or refinance debt obligations of a local government unit incurred on or after July 17, 1997; to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for a local government unit for costs incurred on or after October 1, 2008;*
- f) *To buy or refinance debt obligations of a local government unit incurred on or after July 17, 1997;*
- g) *To guarantee local obligations where such action would improve credit market access or reduce interest rates;*

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he) *As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State, if the proceeds of such bonds will be deposited in the PWSLP;*

i) *To transfer funds to the Water Pollution Control Loan Program. [415 ILCS 5/19.3(d)]*

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE
TO COMPLY WITH LOAN PROCEDURES

Section 662.310 Noncompliance with Loan Procedures

- a) In the event of noncompliance with any condition or obligation arising out of the loan, including any action that would jeopardize or compromise the source of revenue for repayment of the loan or security interest, the Director may take any necessary action as provided by law or by the loan agreement against the loan recipient including, but not limited to, one or more of the following actions:
- 1) Commence legal action in a court of competent jurisdiction;
 - 2) Declare all amounts under the loan immediately due and payable, enforce any security, and recover all loan funds;
 - 3) Terminate the loan pursuant to Section 662.330 (Termination) of this Subpart;
 - 4) Suspend all or part of the project work pursuant to Section 662.320 (Stop-Work Order) of this Subpart; ~~or~~
 - 5) Reduce the amount of the loan by the amount of misused funds; ~~or~~
 - 6) Unilaterally adjust the fixed loan rate of the loan agreement to the current market interest rate.
- b) No action shall be taken under this Section without notice to the loan recipient.

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- c) In determining whether to take action the Agency shall, at a minimum, consider mitigating or aggravating factors, including but not limited to the severity and number of the violations; whether the violation is a continuing one; whether the loan recipient can remedy the violation; and whether the loan recipient remains capable of complying with the approved project work.

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

Section 662.340 Waiver of Procedures

- a) Except as provided in subsection (b) of this Section or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan applicant, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce an applicant's ability to repay the loan to the Agency or will not, in general, weaken the financial position of the PWSLP. The waiver may be subject to such additional conditions the Director deems necessary.
- b) The following procedures will not be waived:
- 1) Section 662.410 (Project Priority Determination) of this Part
 - 2) Section 662.440 (Fixed Loan Rate) of this Part
 - 3) Section 662.510 (Loan Applicant's Responsibilities During Project Planning) of this Part
 - 4) Section 662.520 (State Environmental Review) of this Part
 - 5) Section 662.620(d)(3) (Wage Provisions) of this Part
 - 6) Section 662.620(d)(4) ([Disadvantaged Business Enterprise/MBE/WBE Requirements](#)) of this Part
 - 7) Section 662.620(d)(5) (Debarment ~~and/or~~ Suspension Certification) of this Part
 - 8) Section 662.630(a)(1) ([Disadvantaged Business Enterprise/MBE/WBE](#))

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Requirements) of this Part

- 9) Section 662.630(a)(4) (Debarment ~~and~~ Suspension Certification) of this Part
- 10) Section 662.740 (Operation and Maintenance of the Project) of this Part
- 11) Section 662.910 (Operation, Maintenance and Replacement Revenue System) of this Part
- 12) Section 662.930 (Dedicated Source of Revenue for Units of Local Government) of this Part
- 13) Section 662.935 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part.

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section 662.410 Project Priority Determination

- a) Financial assistance from the PWSLP will be provided only to local government units ~~and eligible~~ privately owned community water supplies for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 663.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 663 after the receipt by the Agency of both loan pre-applications pursuant to Section 662.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved Project Planning pursuant to Section 662.510 (Loan Applicant's Responsibilities During Project Planning) and Section 662.520 (State Environmental Review) of this Part. For a project represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.~~Subpart.~~
- c) Projects included on the Intended Use Plan will be selected from projects on the Project Priority List in priority order, provided the project has an approved Project Plan and is scheduled to initiate construction by March 31 of the subsequent

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federal fiscal year.

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

Section 662.430 Financial Assistance Application and Approval

- a) In order to issue a loan commitment letter, the Agency must have received the following documents:
 - 1) A completed loan application form for financial assistance providing at a minimum the following items:
 - A) Legal name of applicant;
 - B) Address;
 - C) Authorized representative-name and title;
 - D) Cost estimate;
 - E) Amount requested for loan; and
 - F) Verification and signature;
 - 2) An approved project plan in accordance with Section 662.510 (Loan Applicant's Responsibilities During Project Planning) of this Part;
 - 3) A Loan Program Certifications form that includes at a minimum the following:
 - A) The loan applicant must agree to pay all project costs not covered by the loan;
 - B) The loan applicant must certify that it has analyzed the costs and the financial impacts of the proposed project and that it has the financial capability to repay the loan as well as the technical and managerial capacity to maintain compliance with the Safe Drinking Water Act;

ENVIRONMENTAL PROTECTION AGENCY

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- C) The loan applicant must certify that it is not aware of any unlawful or corrupt practices having taken place in the planning or design of the proposed project;
 - D) The loan applicant must certify that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project;
 - E) The loan applicant must certify that it is not barred from being awarded a contract or subcontract under the Illinois Procurement Code [30 ILCS 500]; and
 - F) The loan applicant must provide its correct Federal Taxpayer Identification Number and certify that it is authorized to do business in the State of Illinois;
- 4) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C);
 - 5) An executed inter-governmental agreement necessary for project implementation, where necessary;
 - 6) A resolution, ordinance, or legal document authorizing a representative of the loan applicant to sign loan application documents;
 - 7) A certification of compliance with the Relocation and Real Property Acquisition Policies Act of 1970 (42 USC 4601) must be submitted by loan applicants that are local government units;
 - 8) A certification that the necessary project site, rights-of-way, easements and permits have been obtained;
 - 9) A resolution of intent to comply with the National Flood Insurance Act of 1968 (42 USC 4001-4127) in accordance with Section 662.940 (Floodplain Insurance) of this Part;
 - 10) An approved operation, maintenance and replacement revenue system in accordance with Section 662.910 (Operation, Maintenance and

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Replacement Revenue System) of this Part;

- 11) Documentation to support the loan applicant's ability to repay the loan in accordance with Section 662.930 (Dedicated Source of Revenue For Local Government Units) of this Part or Section 662.935 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part;
- 12) The construction drawings and specifications, suitable for bidding purposes;
- 13) A construction permit application and permit or "authorization to construct" from the Agency, pursuant to the provisions of Sections 14 through 17 or Sections 39 and 40 of the Environmental Protection Act [415 ILCS 5/14 through 17, 39 and 40], whichever is applicable;
- 14) A project completion schedule;
- 15) An executed contract for design and construction related work in accordance with Section 662.630 (Contracts for Personal and Professional Services) of this Part;
- 16) An EPA Form 4700-4 – Compliance Report;
- 17) An enacted ordinance or other legally binding instrument authorizing the bonds, notes, security agreements or other evidence of indebtedness to be delivered to the Agency;
- 18) Proof of publication of the ordinance and any notice required by State statute, where applicable;
- 19) A legal opinion from the loan applicant's legal counsel with respect to the validity and enforceability of the loan applicant's obligations and the absence of conflicts with other agreements, notes, bonds or ordinances; and
- 20) Any other executed legal agreements necessary for project implementation.

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- b) In addition to the items identified in subsection (a) of this Section, the Agency must have received the following items before it will issue the actual Loan Agreement:
- 1) A certified copy of the published bid advertisement(s);
 - 2) Any addenda issued by the loan applicant, if applicable;
 - 3) The bidder's bid bond or cashier's check for not less than 5% of the total bid;
 - 4) The low bidder's certificate of nonsegregated facilities showing compliance with 18 USC 1001;
 - 5) A summary of the evidence that the contractor and engineer have met [the disadvantaged business enterprise requirements pursuant to 40 CFR 33MBE/WBE requirements of federal Executive Orders 11625 and 12138 \(Appendix A, Exhibits A and B\)](#);
 - 6) The submittal of bid tabulations;
 - 7) An analysis of the bids and recommendations for the award of the bids;
 - 8) A copy of the successful bid proposal(s);
 - 9) The notice of the applicant's intent to award;
 - 10) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C) is required from the prime contractor and the engineer; and
 - 11) A certification regarding compliance with Section 33E of the Illinois Criminal Code of 1961 [720 ILCS 5/33E].

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

Section 662.440 Fixed Loan Rate

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- a) The fixed loan rate is comprised of an interest rate and a loan support rate. The fixed loan rate charged for a public water supply facilities loan shall be a simple annual rate at one-half the market interest rate, but not less than 2.50%.
- b) Notwithstanding subsection (a), for the period of time that funds from the ARRA are available for loan commitment, the fixed loan rate charged for all loans from the PWSLP shall be a simple annual rate of 0.00%.

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section 662.610 Requirements for Subagreements

The intent of this Subpart is to provide for maximum open and free competition in the procurement of materials, goods and services for the construction of projects funded from the PWSLP. Any procurement method, except as allowed under this Part, that significantly minimizes open and free competition will be prohibited. The following procedures shall apply to subagreements:

- a) **Local Preference**
Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements under PWSLP loans.
- b) **Profits**
Only fair and reasonable profits may be earned by contractors in subagreements under PWSLP loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 662.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.
- c) **Loan Recipient Responsibility**
The loan recipient shall be responsible for the administration and successful accomplishment of the project for which PWSLP loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but

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not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. Such an individual or firm shall be deemed the loan recipient's agent, and shall be subject to all the provisions of the loan agreement, including this Part 662, that apply to the loan recipient.

- d) Privity of Contract
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts), or to any solicitation or request for proposals thereunder.
- e) Subagreements shall:
 - 1) Be directly related to the accomplishment of the loan recipient's approved work program;
 - 2) Be in the form of an executed written agreement (except for small purchases of \$25,000 or less);
 - 3) Be for monetary or in-kind consideration; and
 - 4) Not be in the nature of a grant or gift.
- f) Documentation
 - 1) Procurement records and files for purchases in excess of \$25,000 shall include the following:
 - A) The basis for contractor selection;
 - B) The justification for lack of competition if competition appropriate to the type of project work to be performed is required but not obtained; and
 - C) The basis for award cost or price.
 - 2) Procurement documentation as described in subsection (f)(1) shall be

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retained by the loan recipient or contractor(s) for the period required by Section 662.820 (Audit and Records) of this Part.

- g) Subagreements shall only be awarded to persons or organizations that:
- 1) Have adequate financial resources for performance;
 - 2) Have the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain these requirements;
 - 3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;
 - 4) Have a satisfactory record of integrity, judgment and performance;
 - 5) Have an adequate financial management system and audit procedure which is consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards;
 - 6) Maintain a standard of procurement in accordance with this Part 662;
 - 7) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
 - 8) Conform to the civil rights, equal employment opportunity (Appendix A, Exhibit D) and labor law requirements of this Part 662.
- h) Fraud and Other Unlawful or Corrupt Practices
- 1) The obtaining and administration of loans from the PWSLP, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks, and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.

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- 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices that are brought to its attention. The loan recipient shall advise the Agency immediately when any such allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any matter.
- i) Negotiation of Subagreements
All subagreements greater than \$25,000 shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent and not be in conflict with other State statutes. Procurements may be negotiated by the loan recipient, if approved by the Agency, for the following reasons:
 - 1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement); or
 - 2) The materials or services to be procured are available from only one person or firm; or
 - 3) The procurement is for personal or professional services, or for any services to be rendered by an educational institution; or
 - 4) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or
 - 5) The procurement is for material or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

Section 662.620 Construction Contracts

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The following procedures shall apply to construction contracts (subagreements) awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured and the notice to proceed.
- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted under Section 662.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:
 - 1) Evidence of advertising
The loan recipient shall submit to the Agency a certified copy of the bid advertisement which notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the PWSLP as set out in this Part 662, the Prevailing Wage Act [820 ILCS 130], the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order No. 11246, as amended (Appendix A, Exhibit D).
 - 2) Adequate bidding documents
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
 - A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule. (Drawings and specifications may be made available for inspection instead of being furnished.);
 - B) The terms and conditions of the contract to be awarded;
 - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the

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contract;

- D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the PWSLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
- E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan applicant;
- F) A copy of subsections (b)(~~24~~)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;
- G) By submission of the bid each bidder certifies, and in the case of a joint bid each party thereto certifies as to his or her own organization, that in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
 - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
 - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33E of the Illinois Criminal Code of 1961 [720 ILCS 5/33E].

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- H) Each person signing the bid shall certify that:
- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2+)(G); or
 - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that such persons have not participated, and will not participate, in any action contrary to subsection (b)(2+)(G), and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2+)(G).
- 3) Addenda to bidding documents
If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, it shall send written addenda to all firms who have obtained bidding documents, in time to be considered prior to the bid opening time. When appropriate, the period for submission of bids shall be extended. All addenda to the bidding documents should be submitted to the Agency for approval prior to the bid opening.
- 4) Award to the low, responsive, responsible bidder
- A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award and the loan applicant's letter of intent to award or the official minutes of board approval.
 - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan

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applicant.

- C) If the award is intended to be made to a firm which did not submit the lowest bid, prior to any award, the loan applicant shall submit to the Agency a written statement, explaining why each lower bidder was deemed not responsive or not responsible.

c) Negotiations of Contract Amendments (Change Orders)

- 1) Loan recipient responsibility
The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:
 - A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
 - B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
 - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
- 2) Changes in contract price or time
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
- 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
- 4) Agency review
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:

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- A) A description of the changed work;
 - B) The contractor's proposal itemizing the cost and time to complete the changed work;
 - C) The recipient's or engineer's estimate of the cost and time to complete the changes;
 - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and
 - E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) Required Construction Contract Provisions
Each construction contract shall include the following provisions:
- 1) Audit; access to records
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c), (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency, or any of their authorized representatives shall have access to the books, records, documents, and other evidence for purposes of inspection, audit, and copying. The contractor shall provide facilities for access and inspection.
 - B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract

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price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.

- C) Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection (d)(1)(A). Where the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of such dispute, appeal, litigation, claim, or exception.
- F) The right of access will generally be exercised with respect to financial records under:
 - i) Negotiated prime contracts;
 - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
 - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.

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- G) The right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:
- i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
 - ii) If there is any indication that fraud, gross abuse, or corrupt practices may be involved in the award or performance of the contract or subcontract.
- 2) **Covenant against contingent fees**
The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 3) **Wage provisions**
The contractor shall pay prevailing wages in accordance with the Illinois Prevailing Wage Act [820 ILCS 130].
- 4) **Disadvantaged business enterprise ~~MBE/WBE~~ requirements**
The contractor shall provide evidence, including but not limited to a copy of the advertisement(s) and the record of negotiation that it has taken affirmative steps in accordance with 40 CFR 33 federal Executive Orders 11625 and 12138 (Appendix A, Exhibits A and B), to assure that disadvantaged business enterprises ~~small, minority and women's businesses~~ are used when possible as sources of supplies, equipment, construction and services consistent with the provisions of the Agency's Operating Agreement with USEPA.
- 5) **Debarment ~~and~~ suspension provisions**
The contract shall require the successful bidder(s) to submit a "Certification Regarding Debarment, Suspension and Other Responsibility

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Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).

- 6) Nonsegregated facilities provisions
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) Subcontracts under Construction Contracts
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with the following:
 - 1) All applicable provisions of federal, State and local law;
 - 2) All provisions of this Part 662 regarding fraud and other unlawful or corrupt practices;
 - 3) All provisions of this Part 662 with respect to access to facilities, records and audit of records.
 - 4) All provisions of subsection (d)(5) that require a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
- f) Contractor Bankruptcy
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

Section 662.630 Contracts for Personal and Professional Services

All subagreements for personal and professional services for design or construction expected to

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exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
 - 1) Evidence, such as, but not limited to, a copy of the advertisement(s) and the record of negotiation in accordance with [40 CFR 33 federal Executive Orders 11625 and 12138 \(Appendix A, Exhibits A and B\)](#), that affirmative steps have been taken to assure that [disadvantaged business enterprises, small, minority and women's businesses](#) are used when possible as sources of supplies, equipment, construction, and services consistent with the provisions of the Agency's Operating Agreement with USEPA;
 - 2) An audit and access to records clause that provides as follows:
 - A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
 - B) Books, records, documents and other evidence directly pertinent to performance of PWSLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
 - C) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
 - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
 - E) Records under subsection (a)(2)(B) shall be maintained and made

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available during performance of project services under this agreement and for three years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 662.650 (Disputes) of this Subpart or litigation or the settlement of claims arising out of project performance or costs or items to which an audit exception has been taken, shall be maintained and made available for three years after the resolution of the appeal, litigation, claim or exception;

- 3) A "covenant against contingent fees" clause as follows:
"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee";
 - 4) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C);
 - 5) A description of the scope and extent of the project work;
 - 6) The schedule for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks; and
 - 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises~~small, minority and women's business~~ during the design service phase.
 - c) If, at the time of contract execution, any of the elements required in this Section 662.630 cannot be defined adequately for later tasks, those tasks shall not be

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included in the contract at that time.

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

SUBPART I: FINANCIAL AND MANAGERIAL CAPACITY

Section 662.935 Source of Revenue and Security for Privately Owned Community Water Supplies

- a) The loan applicant must provide a detailed demonstration that there is an adequate source of revenue to repay the principal and interest due on the loan. The loan applicant must also demonstrate that there is adequate security for the full amount of the loan. This shall include, but is not limited to, the following:
 - 1) The audited financial statements and tax returns required under Section 662.920 of this Subpart and the calculation of the ratios set forth in the [Risk Management Association Robert Morris Associates \(RMA\) Annual Statement Studies for the North American Industry Classification System \(NAICS\) #221310 Standard Industrial Classification \(SIC\) #4941](#). The statements must show a positive cash flow for all 3 years. 50% of the ratios must fall in the upper 2 quartiles when compared to the RMA Annual Statement Studies for [NAICS #221310 SIC #4941](#).
 - 2) Any rate increase required to assure that adequate revenues will be generated to make the loan repayments must be adopted in a legally binding manner prior to the first loan disbursement. When applicable, approval of the rate increase by the Illinois Commerce Commission will be required.
 - 3) Appropriate legal documents will be provided to enable the Agency to perfect its security interest in the revenues of the system and other personal properties offered as security by filing the necessary information under the Uniform Commercial Code.
 - 4) The loan applicant must submit a legal description and current appraisal by a licensed appraiser of real property to be used for collateral. The mortgage must be executed prior to the issuance of the loan.
 - 5) Approval from the Illinois Commerce Commission to incur debt, if

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applicable.

- b) The loan recipient must maintain a separate accounting in its books to record the funds available for loan repayment.
- c) The loan recipient must, for the term of the loan, review and adjust the source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient must timely notify the Agency of, and submit to the Agency for approval, all proposed changes to the source of revenue.
- d) Upon request, the loan recipient shall submit to the Agency the status of the funds available for repayment of the loan, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review will be based on, but not limited to, ensuring that the source of revenue generates sufficient revenue and is otherwise in accordance with this Part 662.
- e) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the revenue source and restructure it as necessary.

(Source: Amended at 33 Ill. Reg. 15575, effective October 28, 2009)

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Section 662.APPENDIX A Executive Orders**Section 662.EXHIBIT A Executive Order 11625 (Repealed)**

~~October 14, 1971, 36 F.R. 19967~~

~~PRESCRIBING ADDITIONAL ARRANGEMENTS FOR DEVELOPING
AND COORDINATING A NATIONAL PROGRAM FOR
MINORITY BUSINESS ENTERPRISE~~

~~The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.~~

~~The Office of Minority Business Enterprise, established in 1969, greatly facilitated the strengthening and expansion of our minority enterprise program. In order to take full advantage of resources and opportunities in the minority enterprise field, we now must build on this foundation. One important way of improving our efforts is by clarifying the authority of the Secretary of Commerce (a) to implement Federal policy in support of the minority business enterprise program; (b) to provide additional technical and management assistance to disadvantaged businesses; (c) to assist in demonstration projects; and (d) to coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.~~

~~NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:~~

~~Section 1. Functions of the Secretary of Commerce.~~

- ~~a) The Secretary of Commerce (hereinafter referred to as "the Secretary") shall—~~
- ~~1) Coordinate as consistent with law the plans, programs, and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.~~
 - ~~2) Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the~~

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~~growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of Federal departments and agencies.~~

- 3) ~~Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting the establishment and successful operation of minority business enterprise.~~
 - 4) ~~Within constraints of law and appropriations therefor, and according to his discretion, provide financial assistance to public and private organizations so that they may render technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special problems of minority business enterprises or otherwise to further the purposes of this Order.~~
- b) ~~The Secretary, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a), may—~~
- 1) ~~With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this Order.~~
 - 2) ~~Require a coordinated review of all proposed Federal training and technical assistance activities in direct support of the minority enterprise program to assure consistency with program goals and to avoid duplication.~~
 - 3) ~~Convene, for purposes of coordination, meetings of the heads of such departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this Order.~~
 - 4) ~~Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the~~

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~~purpose of proposing, evaluating and coordinating governmental and private activities in furtherance of the objectives of this Order.~~

- ~~5) Confer with and advise officials of State and local governments.~~
- ~~6) Provide the managerial and organizational framework through which joint or collaborative undertakings with Federal departments or agencies or private organizations can be planned and implemented.~~
- ~~7) Recommend appropriate legislative or executive action.~~

~~Section 2. Advisory Council for Minority Enterprise.~~

- ~~a) The Advisory Council for Minority Enterprise (hereinafter referred to as "the Council"), established by Executive Order no. 11458 of March 5, 1969, (11) shall continue in existence under the terms of this Order.~~
- ~~b) The Council shall be composed of members appointed by the President from among persons, including members of minority groups and representatives from minority business enterprises, who are knowledgeable in this field and who are dedicated to the purpose of this Order. Three members shall serve for a term of two years and may be reappointed.~~
- ~~c) The President shall designate one of the members of the Council as the Chairman of the Council.~~
- ~~d) The Council shall meet at the call of the Secretary.~~
- ~~e) The Council shall be advisory to the Secretary in which capacity it shall—~~
 - ~~1) Serve as a source of knowledge and information on developments in different fields and segments of our economic and social life which affect minority business enterprise.~~
 - ~~2) Keep abreast of plans, programs, and activities in the public and private sectors which relate to minority business enterprise, and advise the Secretary on any measures to better achieve the objectives of this Order.~~

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- 3) ~~Consider, and advise the Secretary, and such officials as he may designate, on problems and matters referred to the Council.~~
- f) ~~For the purposes of Executive Order No. 11007 of February 26, 1962, (12) the Council shall be deemed to have been formed by the Secretary.~~
- g) ~~Members of the Council shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5708) for persons in the Government service employed intermittently.~~
- h) ~~The Secretary shall arrange for administrative support of the Council to the extent necessary, including use of any gifts or bequests accepted by the Department of Commerce pursuant to law.~~

~~Section 3. Responsibilities of Other Federal Departments and Agencies.~~

- a) ~~The head of each Federal department and agency, or a representative designated by him, when and in the manner so requested by the Secretary, shall furnish information, assistance, and reports to, and shall otherwise cooperate with the Secretary in the performance of his functions hereunder.~~
- b) ~~The head of each Federal department or agency shall, when so requested by the Secretary, designate his Under Secretary or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.~~
- e) ~~The officials designated under the preceding paragraph, when so requested shall review and report to the Secretary upon the policies and programs of the minority business enterprise program, and shall keep the Secretary informed of all proposed budgets, plans and programs of his department or agency affecting minority business enterprise.~~
- e) ~~Each Federal department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority business enterprises and to support the program herein set forth, and shall cooperate with the Secretary of Commerce in increasing the total Federal effort.~~

~~Section 4. Reports.~~

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~~The Secretary shall, no later than 120 days after the close of each fiscal year, submit to the President a full report of his activities hereunder during the previous fiscal year. Further, the Secretary shall, from time to time, submit to the President his recommendations for legislation or other action as he deems desirable to promote the purposes of this Order. Each Federal department or agency shall report to the Secretary as hereinabove provided on a timely basis so that the Secretary may consider such reports for his report and recommendations to the President. Each Federal department or agency shall develop and implement systematic data collection processes which will provide to the Office of Minority Business Enterprise Information Center current data helpful in evaluating and promoting the efforts herein described.~~

~~Section 5. Policies and Standards.~~

~~The Secretary may establish such policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this Order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.~~

~~Section 6. Definitions.~~

~~For purposes of this Order, the following definitions shall apply:~~

- ~~a) "Minority business enterprise" means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts.~~
- ~~b) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.~~

~~Section 7. Construction.~~

~~Nothing in this Order shall be construed as subjecting any function vested in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agency or office exclusively, or as abrogating or restricting any such function in any manner.~~

~~Section 8. Prior Executive Order.~~

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~~Executive Order No. 11458 of March 5, 1969, (13) is hereby superseded.~~

~~THE WHITE HOUSE~~

~~RICHARD NIXON~~

~~October 13, 1971.~~

~~(11) 15 U.S.C.A. Section 631 note.~~

~~(12) 5 U.S.C.A. Section 901 note.~~

~~(13) 15 U.S.C.A. Section 631 note.~~

(Source: Repealed at 33 Ill. Reg. 15575, effective October 28, 2009)

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Section 662.APPENDIX A Executive Orders**Section 662.EXHIBIT B Executive Order 12138 (Repealed)**

May 18, 1979, 44 F.R. 29637

~~CREATING A NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND
PRESCRIBING ARRANGEMENTS FOR DEVELOPING, COORDINATING AND
IMPLEMENTATING A NATIONAL PROGRAM FOR WOMEN'S BUSINESS ENTERPRISE~~

~~In response to the findings of the Interagency Task Force on Women Business Owners and congressional findings that recognize:~~

- ~~1) the significant role which small business and women entrepreneurs can play in promoting full employment and balanced growth in our economy;~~
- ~~2) the many obstacles facing women entrepreneurs; and~~
- ~~3) the need to aid and stimulate women's business enterprise;~~

~~By the authority vested in me as President of the United States of America, in order to create a National Women's Business Enterprise Policy and to prescribe arrangements for developing, coordinating and implementing a national program for women's business enterprise, it is ordered as follows:~~

~~1-1. Responsibilities of the Federal Departments and Agencies:~~

- ~~1-101. Within the constraints of statutory authority and as otherwise permitted by law:~~
 - ~~a) Each department and agency of the Executive Branch shall take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system.~~
 - ~~b) Each department and agency shall take affirmative action in support of women's business enterprise in appropriate programs and activities including but not limited to:~~

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- 1) ~~management, technical, financial and procurement assistance,~~
 - 2) ~~business related education, training, counseling and information dissemination, and~~
 - 3) ~~procurement.~~
- e) ~~Each department or agency empowered to extend Federal financial assistance to any program or activity shall issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the ground of sex. For purposes of this subsection, Federal financial assistance means assistance extended by way of grant, cooperative agreement, loan or contract other than a contract of insurance or guaranty. These regulations shall prescribe sanctions for noncompliance. Unless otherwise specified by law, no agency sanctions shall be applied until the agency or department concerned has advised the appropriate person or persons of the failure to comply with its regulations and has determined that compliance cannot be secured by voluntary means.~~
- ~~1-102. For purposes of the Order, affirmative action may include, but is not limited to, creating or supporting new programs responsive to the special need for women's business enterprise, establishing incentives to promote business or business related opportunities for women's business enterprise, collecting and disseminating information in support of women's business enterprise, and insuring to women's business enterprise knowledge of and ready access to business related services and resources. If, in implementing this Order, an agency undertakes to use or to require compliance with numerical set-asides, or similar measures, it shall state the purpose of such measure, and the measure shall be designed on the basis of pertinent factual findings of discrimination against women's business enterprise and the need for such measure.~~
- ~~1-103. In carrying out their responsibilities under Section 1-1, the departments and agencies shall consult the Department of Justice, and the Department of Justice shall provide legal guidance concerning these responsibilities.~~

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- ~~1-2. Establishment of the Interagency Committee on Women's Business Enterprise.~~
- ~~1-201. To help insure that the actions ordered above are carried out in an effective manner, I hereby establish the Interagency Committee on Women's Business Enterprise (hereinafter called the Committee).~~
- ~~1-202. The Chairperson of the Committee (hereinafter called the Chairperson) shall be appointed by the President. The Chairperson shall be the presiding officer of the Committee and shall have such duties as prescribed in this Order or by the Committee in its rules of procedure. The Chairperson may also represent his or her department, agency or office on the Committee.~~
- ~~1-203. The Committee shall be composed of the Chairperson and other members appointed by the heads of departments and agencies from among high level policy making officials. In making these appointments, the recommendations of the Chairperson shall be taken into consideration. The following departments and agencies and such other departments and agencies as the Chairperson shall select shall be members of the Committee: the Departments of Agriculture; Commerce; Defense; Energy; Health, Education, and Welfare; Housing and Urban Development; Interior; Justice; Labor; Transportation; Treasury; the Federal Trade Commission; General Services Administration; National Science Foundation; Office of Federal Procurement Policy; and the Small Business Administration. These members shall have a vote. Nonvoting members shall include the Executive Director of the Committee and at least one but no more than three representatives from the Executive Office of the President appointed by the President.~~
- ~~1-204. The Committee shall meet at least quarterly at the call of the Chairperson, and at such other times as may be determined to be useful according to the rules of procedure adopted by the Committee.~~
- ~~1-205. The Administrator of the Small Business Administration shall provide an Executive Director and adequate staff and administrative support for the Committee. The staff shall be located in the Office of the Chief Counsel for Advocacy of the Small Business Administration, or in such other office as may be established specifically to further the policies expressed herein. Nothing in this Section prohibits the use of other properly available funds and resources in support of the Committee.~~

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~~1-3. Functions of the Committee.~~~~The Committee shall in a manner consistent with law:~~

- ~~1-301. Promote, coordinate and monitor the plans, programs and operations of the departments and agencies of the Executive Branch which may contribute to the establishment, preservation and strengthening of women's business enterprise. It may, as appropriate, develop comprehensive interagency plans and specific program goals for women's business enterprise with the cooperation of the departments and agencies.~~
- ~~1-302. Establish such policies, definitions, procedures and guidelines to govern the implementation, interpretation and application of this order, and generally perform such functions and take such steps as the Committee may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.~~
- ~~1-303. Promote the mobilization of activities and resources of State and local governments, business and trade associations, private industry, colleges and universities, foundations, professional organizations, and volunteer and other groups toward the growth of women's business enterprise, and facilitate the coordination of the efforts of these groups with those of the departments and agencies.~~
- ~~1-304. Make an annual assessment of the progress made in the Federal Government toward assisting women's business enterprise to enter the mainstream of business ownership and to provide recommendations for future actions to the President.~~
- ~~1-305. Convene and consult as necessary with persons inside and outside government to develop and promote new ideas concerning the development of women's business enterprise. 1-306. Consider the findings and recommendations of government and private sector investigations and studies of the problems of women entrepreneurs, and promote further research into such problems.~~
- ~~1-307. Design a comprehensive and innovative plan for a joint Federal and private sector effort to develop increased numbers of new women-owned businesses and larger and more successful women-owned businesses. The plan should set~~

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~~specific reasonable targets which can be achieved at reasonable and identifiable costs and should provide for the measurement of progress towards these targets at the end of two and five years. Related outcomes such as income and tax revenues generated, jobs created, new products and services introduced or new domestic or foreign markets created should also be projected and measured in relation to costs wherever possible. The Committee should submit the plan to the President for approval within six months of the effective date of this Order.~~

~~1-4. Other Responsibilities of the Federal Departments and Agencies:~~

- ~~1-401. The head of each department and agency shall designate a high level official to have the responsibility for the participation and cooperation of that department or agency in carrying out this Executive Order. This person may be the same person who is the department or agency's representative to the Committee.~~
- ~~1-402. To the extent permitted by law, each department and agency upon request by the Chairperson shall furnish information, assistance and reports and otherwise cooperate with the Chairperson and the Committee in the performance of their functions hereunder. Each department or agency shall ensure that systematic data collection processes are capable of providing the Committee current data helpful in evaluating and promoting the efforts herein described.~~
- ~~1-403. The officials designated under Section 1-401, when so requested, shall review the policies and programs of the women's business enterprise program, and shall keep the Chairperson informed of proposed budget, plans and programs of their departments or agencies affecting women's business enterprise.~~
- ~~1-404. Each Federal department or agency, within constraints of law, shall continue current efforts to foster and promote women's business enterprise and to support the program herein set forth, and shall cooperate with the Chairperson and the Committee in increasing the total Federal effort.~~

~~1-5. Reports:~~

- ~~1-501. The Chairperson shall, promptly after the close of the fiscal year, submit to the President a full report of the activities of the Committee hereunder during the previous fiscal year. Further, the Chairperson shall, from time to time,~~

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~~submit to the President the Committee's recommendations for legislation or other action to promote the purposes of this Order.~~

- ~~1-502. Each Federal department and agency shall report to the chairperson as hereinabove provided on a timely basis so that the Chairperson and the Committee can consider such reports for the Committee report to the President.~~

~~1-6. Definitions.~~

~~For the purposes of this Order, the following definitions shall apply:~~

- ~~1-601. "Women-owned business" means a business that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.~~
- ~~1-602. "Women's business enterprise" means a woman-owned business or businesses or the efforts of a woman or women to establish, maintain or develop such a business or businesses.~~
- ~~1-603. Nothing in subsections 1-601 or 1-602 of this Section 1-6 should be construed to prohibit the use of other definitions of a woman-owned business or women's business enterprise by departments and agencies of the Executive Branch where other definitions are deemed reasonable and useful for any purpose not inconsistent with the purposes of this Order. Wherever feasible, departments and agencies should use the definition of a woman-owned business in subsection 1-601 above for monitoring performance with respect to women's business enterprise in order to assure comparability of data throughout the Federal Government.~~

~~1-7. Construction.~~

~~Nothing in this Order shall be construed as limiting the meaning or effect of any existing Executive Order.~~

THE WHITE HOUSE

JIMMY CARTER

May 18, 1979.

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(Source: Repealed at 33 Ill. Reg. 15575, effective October 28, 2009)

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- 1) Heading of the Part: Procedures for Providing Financial Assistance from the Public Water Supply Loan Program under the American Recovery and Reinvestment Act of 2009

- 2) Code Citation: 35 Ill. Adm. Code 664

- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
664.110	New Section
664.120	New Section
664.130	New Section
664.140	New Section
664.210	New Section
664.220	New Section
664.230	New Section
664.310	New Section
664.320	New Section
664.330	New Section
664.340	New Section
664.410	New Section
664.420	New Section
664.430	New Section
664.440	New Section
664.450	New Section
664.460	New Section
664.470	New Section
664.480	New Section
664.490	New Section
664.510	New Section
664.520	New Section
664.610	New Section
664.620	New Section
664.630	New Section
664.640	New Section
664.650	New Section
664.660	New Section
664.670	New Section
664.710	New Section
664.720	New Section
664.730	New Section

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664.740	New Section
664.750	New Section
664.810	New Section
664.820	New Section
664.830	New Section
664.910	New Section
664.920	New Section
664.930	New Section
664.940	New Section
664.950	New Section
664.1010	New Section
664.1020	New Section
664.1030	New Section
664.1110	New Section
664.1120	New Section
664.APPENDIX A EXHIBIT A	New Section
664.APPENDIX A EXHIBIT B	New Section
664.APPENDIX B	New Section

- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act. [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Amendments: October 28, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rule contain incorporations by reference? Yes
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Illinois Environmental Protection Agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: June 19, 2009; 33 Ill. Reg. 7967
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Differences between proposal and final version: Grammatical, punctuation and format changes were made as agreed upon with JCAR. In in Section 664.610(i), subsection (2) stating "The aggregate amount of the contract to be competitively negotiated is allowed

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by State law; or" was added since it was inadvertently left out when the Agency first proposed the rulemaking.

- 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 rule replace any emergency rule currently in effect? Yes. An emergency rulemaking became effective 6/2/09 and was published at 33 Ill. Reg. 8722.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: This rulemaking addresses how the Agency will disburse monies received under the American Recovery and Reinvestment Act of 2009. This rulemaking establishes a fixed loan rate to 0.00% and a more streamlined approach for the loan application process to distribute the stimulus money to shovel-ready projects in accordance with the requirements of The American Recovery and Reinvestment Act of 2009.
- 16) Information and questions regarding these adopted rules shall be directed to:

Stefanie Diers, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

217-782-5544

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 664

PROCEDURES FOR PROVIDING FINANCIAL ASSISTANCE FROM THE
PUBLIC WATER SUPPLY LOAN PROGRAM UNDER THE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

SUBPART A: INTRODUCTION

Section	
664.110	Purpose
664.120	Administration
664.130	Definitions
664.140	Incorporations by Reference

SUBPART B: FEDERAL REQUIREMENTS FOR THE
PUBLIC WATER SUPPLY LOAN PROGRAM

Section	
664.210	Uses of the Public Water Supply Loan Program
664.220	Agency Responsibilities Under the Federal Safe Drinking Water Act and the American Recovery and Reinvestment Act of 2009
664.230	Green Project Reserve

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE
TO COMPLY WITH LOAN PROCEDURES

Section	
664.310	Noncompliance with Loan Procedures
664.320	Stop-Work Order
664.330	Termination
664.340	Waiver of Procedures

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section	
664.410	Project Priority Determination

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- 664.420 Pre-Application for Financial Assistance and Identification of Project to be Funded
- 664.430 Financial Assistance Application and Approval
- 664.440 Fixed Loan Rate
- 664.450 Refinancing
- 664.460 Limitation on Design Cost
- 664.470 Limitation on Financial Assistance
- 664.480 Principal Forgiveness
- 664.490 Financial Assistance to Privately Owned Community Water Supplies

SUBPART E: PROJECT PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section

- 664.510 Loan Applicant's Responsibilities During Project Planning
- 664.520 State Environmental Review

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section

- 664.610 Requirements for Subagreements
- 664.620 Construction Contracts
- 664.630 Contracts for Personal and Professional Services
- 664.640 Compliance with Procurement Requirements for Construction Contracts
- 664.650 Disputes
- 664.660 Indemnity
- 664.670 Covenant Against Contingent Fees

SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION, CHANGES, COMPLETION AND OPERATION OF PROJECT

Section

- 664.710 Construction Initiation
- 664.720 Project Changes
- 664.730 Construction Engineering
- 664.740 Operation and Maintenance of the Project
- 664.750 Final Inspection

SUBPART H: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING AND RECORDS

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Section

- 664.810 Access
- 664.820 Audit and Records
- 664.830 Single Audit Act

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

Section

- 664.910 Operation, Maintenance and Replacement Revenue System
- 664.920 Financial Capability
- 664.930 Dedicated Source of Revenue for Local Government Units
- 664.940 Source of Revenue and Security for Privately Owned Community Water Supplies
- 664.950 Floodplain Insurance

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

Section

- 664.1010 Determination of Allowable Costs
- 664.1020 Use of Loan Funds and Payment of Unallowable Costs
- 664.1030 Disbursement of Loan Funds

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT

Section

- 664.1110 Loan Repayment to the Agency
- 664.1120 Delinquent Loan Repayments

- 664.APPENDIX A Executive Orders
 - EXHIBIT A Executive Order 12549
 - EXHIBIT B Executive Order 11246
- 664.APPENDIX B Loan Application Form

AUTHORITY: Implementing and authorized by Sections 19.1 through 19.9 of the Environmental Protection Act [415 ILCS 5/19.1 through 19.9].

SOURCE: Adopted by emergency rulemaking at 33 Ill. Reg. 8722, effective June 2, 2009, for a maximum of 150 days; adopted at 33 Ill. Reg. 15622, effective October 28, 2009.

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SUBPART A: INTRODUCTION

Section 664.110 Purpose

The federal Safe Drinking Water Act Amendments of 1996 include a mechanism to provide capitalization grants to the states for the purpose of establishing drinking water revolving loan funds. 42 USC 300j-12 authorizes the Administrator of the United States Environmental Protection Agency to enter into agreements with the states to establish these loan funds, and establishes specific requirements for the development and operation of the state loan programs. The Illinois General Assembly has created the Public Water Supply Loan Program (PWSLP), to be administered by the Illinois Environmental Protection Agency [415 ILCS 5/19.1 through 19.9]. The American Recovery and Reinvestment Act of 2009 (ARRA) provides a source of capitalization grants to the states to provide loans, as well as additional subsidization including forgiveness of principal, negative interest loans, and grants to eligible applicants for the construction of public water supply facilities. This Part 664 sets out procedures the Agency will use to provide financial assistance from the ARRA, which shall be administered through the PWSLP.

Section 664.120 Administration

- a) The Public Water Supply Loan Program, an interest-bearing special fund, will be administered by the Agency as an instrumentality of the State of Illinois in accordance with the Operating and Capitalization Grant Agreements between the Agency and the USEPA in accordance with State and federal laws. All funds from the ARRA for the construction of public water supply facilities will be administered through the PWSLP.
- b) Copies of forms that are required and sample language that can be used to satisfy the requirements of the ARRA financial application administered under the authority of the PWSLP can be obtained from the Illinois Environmental Protection Agency, Infrastructure Financial Assistance Section, 1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276, or found on the Agency's website at www.epa.state.il.us.
- c) The program requirements of the ARRA shall take precedent on projects receiving financial assistance from both the ARRA and the PWSLP.

Section 664.130 Definitions

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a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted under that Act.

b) For the purposes of this Part, the following definitions apply:

Addenda – Documents, issued by the loan applicant after advertisement for bids, that modify or interpret the contract documents, drawings and specifications, by additions, deletions, clarifications or corrections.

Agency – Illinois Environmental Protection Agency.

ARRA – American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

Billed Customers – The customers receiving a bill who are responsible for paying for water services.

Binding Commitment – A legal obligation between the Agency and a local government unit or privately owned community water supply to provide financial assistance from the Public Water Supply Loan Program to that local government unit or privately owned community water supply, specifying the terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

Building Cost – The cost of erection of construction contract line items. Building costs do not include preliminary planning, engineering, architectural, legal, fiscal, administrative or contingency costs.

Capitalization Grant – The actual federal funds received by the Agency for deposit into the PWSLP as a result of the capitalization grant agreement with the USEPA.

Capitalization Grant Agreement – The agreement entered into each federal fiscal year between the Agency and the USEPA for the purpose of providing a grant to capitalize the PWSLP and enable the Agency to provide assistance for construction of public water supply facilities.

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Change Order – A written order by the loan recipient to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Construction – *Any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the public water supply facilities; engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement or extension of public water supply facilities, or the inspection or supervision of any of the foregoing items.* [415 ILCS 5/19.2(d)]

Contract Documents – The contract, including but not limited to advertisement for bids, information for bidders, bid, bid bond agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications and addenda.

Dedicated Source of Revenue – The type of security and the basis of legal authorization that are dedicated by legislative enactment or other appropriate authority, along with the applicable revenue source pledged for repayment, and recorded in an account for the purpose of loan repayment to the PWSLP, which is sufficient to repay the principal and interest on the loan.

Design – All administrative, legal and engineering tasks, subsequent to project plan approval but prior to advertisement for bid proposal, associated with receiving approval of a loan application. This shall include the following: surveys, designs, plans, working drawings, specifications, soil investigations and any other tests or process determinations required to establish design criteria, and development of user charge systems.

Director – Director of the Illinois Environmental Protection Agency.

Energy Efficiency – The use of improved technologies and practices to reduce the energy consumption of water quality projects, including projects to reduce energy consumption or produce clean energy used by a treatment works.

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Environmentally Innovative Projects – Projects that demonstrate new and/or innovative approaches to managing water resources in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced cost and projects that foster adaptation of water protection programs and practices to climate change.

Fixed Loan Rate – The fixed loan rate shall be 0.00% for loans issued from the funds provided by the ARRA.

Fund – The Water Revolving Fund authorized by 415 ILCS 5/19.3, consisting of the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program.

Green Infrastructure – Includes a wide array of practices that manage wet weather to maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing and using stormwater. In the context of PWSLP, green infrastructure consists of site-specific practices, such as green roofs and porous pavement at drinking water utility facilities. In addition to managing rainfall, these green infrastructure technologies can simultaneously provide other benefits such as reducing energy demands.

Health Hazard Determination – A health hazard determination exists when concentrations of regulated contaminants, in a water supply, or concentrations of contaminants not otherwise regulated, exceed health effects standards published in USEPA Health Advisories, or by the Illinois Department of Public Health or Centers for Disease Control and Prevention, or that otherwise pose an immediate threat to public health.

Initiation of Loan Repayment Period – The date in a loan agreement or amendment that establishes the beginning point of the loan repayment period.

Initiation of Operation – The date specified by the loan agreement on which use of the project began operation for the purposes that it was planned, designed and constructed.

Intended Use Plan – *A plan which includes a description of the short and long term goals and objectives of the PWSLP, project categories, terms of financial assistance, communities and population benefited.* [415 ILCS 5/19.2(e)]

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Loan Agreement – The contractual agreement between the Agency and the local government unit or privately owned community water supply that contains the terms and conditions governing the loan issued from the PWSLP.

Loan Applicant – A local government unit or privately owned community water supply that has applied for a loan from the PWSLP for construction of public water supply facilities.

Loan Commitment Letter – The letter that is sent by the Agency to the loan applicant that reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The Procedures for Providing Financial Assistance from the Public Water Supply Loan Program under the American Recovery and Reinvestment Act of 2009.

Loan Recipient – A local government unit or privately owned community water supply that has been provided a loan for construction of public water supply facilities from the PWSLP and that will own and be responsible for the operation and maintenance of the community water supply facility.

Local Government Unit – *A county, municipality, township, municipal or county sewerage or utility authority, sanitary district, public water district, improvement authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater treatment facilities or public water supply facilities or both.* [415 ILCS 5/19.2(g)]

Maximum Contaminant Level (MCL) – The maximum permissible level of a contaminant in water that is delivered to any user of a public water system.

Operating Agreement – The agreement between the Agency and USEPA that establishes the policies, procedures and activities for the application and receipt of federal capitalization grant funds for capitalization of PWSLP.

Principal – All disbursements that will be financed at the time the repayment schedule period begins.

Principal Forgiveness – A portion of the loan amount that does not have to be repaid (is forgiven) upon execution of the loan.

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Privately Owned Community Water Supply – *An investor-owned water utility, if under Illinois Commerce Commission regulation and operating as a separate and distinct water utility; a not-for-profit water corporation, if operating specifically as a water utility; and a mutually owned or cooperatively owned community water system, if operating as a separate water utility.* [415 ILCS 5/19.2]

Project – The activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

Project Priority List – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 663 (Procedures and Requirements for Determining Loan Priorities of Projects in the Public Water Supply Loan Program) that the Agency has determined are eligible to receive financial assistance from the PWSLP.

PWSLP – Public Water Supply Loan Program as authorized by Section 19.2 of the Environmental Protection Act [415 ILCS 5/19.2].

Responsible Bid – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract documents. Information required to demonstrate responsibility may be corrected or submitted after bid opening.

Responsive Bid – A bid that complies with all meaningful or material aspects of the contract documents. The bid must constitute a definite and unqualified offer to meet the material requirements of the contract documents, including any terms that affect price, quality, quantity or time of delivery, or are clearly identified in the contract documents to be complied with at the risk of bid rejection for non-responsiveness. Bid defects resulting in a non-responsive bid may not be corrected after the bid opening.

SDWA – The federal Safe Drinking Water Act, as amended (42 USC 300f).

Source of Revenue – The revenues of the system, including accounts receivable and the proceeds that are sufficient to repay the principal on the loan.

Subagreement – A written agreement between the loan recipient and another party and any tier of agreement thereunder to furnish services, supplies or

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equipment necessary to complete the project for which a loan was provided, including contracts for personal and professional services and purchase orders.

Treatment Technique Requirement – An enforceable procedure developed by USEPA when it is not economically or technologically feasible to ascertain the level of a contaminant. Public water supplies must follow this procedure and treat their drinking water supplies according to USEPA specifications to ensure the contaminant is controlled.

Useful Life – The estimated period during which a public water supply facility is intended to be operable.

USEPA – United States Environmental Protection Agency.

Water Efficiency – The use of improved technologies and practices to deliver equal or better services with less water.

Section 664.140 Incorporations by Reference

- a) The following publications are incorporated by reference:
 - 1) American Institute of Certified Public Accountants Professional Standards (1996), 666 Fifth Avenue, New York, New York 10019.
 - 2) California State University, Sacramento, School of Engineering:
 - A) Small Water System Operation and Maintenance, Third Edition, 1995;
 - B) Water Distribution System Operation and Maintenance, Third Edition, 1996;
 - C) Water Treatment Plant Operation, Volume I, Third Edition, 1996 and Volume II, Second Edition, 1995.
- b) This Part 664 incorporates no later editions or amendments.

**SUBPART B: FEDERAL REQUIREMENTS FOR THE
PUBLIC WATER SUPPLY LOAN PROGRAM**

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Section 664.210 Uses of the Public Water Supply Loan Program

The following are the acceptable uses of the PWSLP:

- a) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal;*
- b) *To make direct loans at or below market interest rates to any eligible local government unit or to any eligible privately owned community water supply to finance the construction of public water supplies;*
- c) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible local government unit or to any eligible privately owned community water supply, and to provide additional subsidization to any eligible local government unit or to any eligible privately owned community water supply, including, but not limited to, forgiveness of principal, negative interest rates, and grants;*
- d) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to buy or refinance the debt obligation of a local government unit for costs incurred on or after October 1, 2008;*
- e) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for a local government unit for costs incurred on or after October 1, 2008;*
- f) *To buy or refinance debt obligations of a local government unit incurred on or after July 17, 1997;*
- g) *To guarantee local obligations where such action would improve credit market access or reduce interest rates;*
- h) *As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State, if the proceeds of such bonds will be deposited in the PWSLP;*

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- i) *To transfer funds to the Water Pollution Control Loan Program.* [415 ILCS 5/19.3(d)]

Section 664.220 Agency Responsibilities Under the Federal Safe Drinking Water Act and the American Recovery and Reinvestment Act of 2009

The Agency will prepare an Intended Use Plan (IUP) and negotiate an Operating Agreement with USEPA that will be the basis for the Capitalization Grant Agreement. These documents establish the procedures, activities and assurances for operation of the PWSLP, including, but not limited to, the following:

- a) Grant payments will be accepted in accordance with a payment schedule established jointly by the Agency and the USEPA;
- b) A listing and description of projects on the Project Priority List to be provided financial assistance;
- c) The loan repayment period cannot exceed 20 years beyond the earlier of the initiation of operation date or the initiation of the loan repayment period;
- d) All repayments of loan principal shall be deposited into the PWSLP;
- e) Biennial reporting to the USEPA on the Agency's activities under the federal Safe Drinking Water Act;
- f) A description of the criteria and methods used for distribution of funds;
- g) A description of the financial status of the PWSLP; and
- h) The Agency shall act in accordance with the requirements established under the ARRA.

Section 664.230 Green Project Reserve

To the extent there are sufficient eligible project applications, not less than 20 percent of the funds provided from the ARRA shall be for projects to address green infrastructure, water or energy efficiency improvements, or environmentally innovative activities.

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE

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TO COMPLY WITH LOAN PROCEDURES

Section 664.310 Noncompliance with Loan Procedures

- a) In the event of noncompliance with any condition or obligation arising out of the loan, including any action that would jeopardize or compromise the source of revenue for repayment of the loan or security interest, the Director may take any necessary action as provided by law or by the loan agreement against the loan recipient, including, but not limited to, one or more of the following actions:
- 1) Commence legal action in a court of competent jurisdiction;
 - 2) Declare all amounts under the loan immediately due and payable, enforce any security, and recover all loan funds;
 - 3) Terminate the loan pursuant to Section 664.330 (Termination) of this Subpart;
 - 4) Suspend all or part of the project work pursuant to Section 664.320 (Stop-Work Order) of this Subpart;
 - 5) Reduce the amount of the loan by the amount of misused funds; or
 - 6) Unilaterally adjust the fixed loan rate of the loan agreement to the current market interest rate.
- b) No action shall be taken under this Section without notice to the loan recipient.
- c) In determining whether to take action, the Agency shall, at a minimum, consider mitigating or aggravating factors, including, but not limited to, the severity and number of the violations; whether the violation is a continuing one; whether the loan recipient can remedy the violation; and whether the loan recipient remains capable of complying with the approved project work.

Section 664.320 Stop-Work Order

- a) In the event of any violation of this Part or non-compliance with the terms of the loan agreement, the Agency may, by written order, require the loan recipient to stop all or any part of the project work for a period of not more than 30 days after

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the date of the order, and for any further period to which the parties may agree. Any such order shall include a list of the project activities to which it applies. Upon receipt of a stop-work order, the loan recipient shall immediately comply with its terms and shall minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within 30 days after the date of the stop-work order, or within the period of any extension to which the parties have agreed, the Agency shall:

- 1) Cancel the stop-work order upon resolution of the violation or cause leading to that stop-work order; or
 - 2) Terminate the work covered by the stop-work order as provided in Section 664.330(a) of this Subpart.
- b) If a stop-work order is canceled or the period of the order or any extension of that period expires, the loan recipient shall resume work. An adjustment may be made in the loan period, the project period, the loan amount, or any combination of these, and the loan amended accordingly, if the loan recipient asserts a written claim for the adjustment within 30 days after the end of the work stoppage.
- c) All costs that are incurred by the loan recipient after the receipt of a stop-work order, or during any agreed to extension of the stop-work order period to which the Agency and the loan recipient have agreed, shall be deemed unallowable costs unless otherwise authorized by the Agency in writing or authorized under the loan procedures.

Section 664.330 Termination

- a) **Loan Termination by the Agency**
The Agency, by written notice to the loan recipient, may terminate the loan in whole or in part. Cause for termination shall include, but not be limited to, failure by the loan recipient to comply with the terms and conditions of the loan. Upon loan termination, the loan recipient shall refund any unexpended loan funds to the State of Illinois to be deposited in the PWSLP, except for such portion as may be required to pay the allowable costs of materials and equipment furnished or services rendered under an enforceable contract prior to the effective date of the termination.
- b) **Project Termination by the Loan Recipient**

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A loan recipient who wishes to terminate a project for which the loan has been provided must submit a written request to the Agency that documents good cause for the proposed termination. If the Agency agrees that there is good cause for termination of all or any portion of the project, it shall enter into a termination agreement with the loan recipient or unilaterally terminate the loan. If the Agency finds that the loan recipient has terminated the project without good cause, it shall declare the loan in default, and all loan funds previously paid to the loan recipient, together with interest on the loan, shall be returned to the State of Illinois in accordance with a schedule established by the Agency for deposit into the PWSLP. Good cause to terminate a loan project includes, but is not limited to:

- 1) Changes in economic circumstances within the loan recipient's service area; and
- 2) Information that the approved treatment technology will not perform as originally anticipated.

Section 664.340 Waiver of Procedures

- a) Except as provided in subsection (b) or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan applicant, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce an applicant's ability to repay the loan to the Agency or will not, in general, weaken the financial position of the PWSLP. The waiver may be subject to such additional conditions the Director deems necessary.
- b) The following procedures will not be waived:
 - 1) Section 664.410 (Project Priority Determination) of this Part
 - 2) Section 664.440 (Fixed Loan Rate) of this Part
 - 3) Section 664.510 (Loan Applicant's Responsibilities During Project Planning) of this Part
 - 4) Section 664.520 (State Environmental Review) of this Part

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- 5) Section 664.620(d)(3) (Wage Provisions) of this Part
- 6) Section 664.620(d)(4) (Disadvantaged Business Enterprise Requirements) of this Part
- 7) Section 664.620(d)(6) (Debarment and Suspension Provisions) of this Part
- 8) Section 664.630(a)(1) (Disadvantaged Business Enterprise Requirements) of this Part
- 9) Section 664.630(a)(4) (Debarment and Suspension Certification) of this Part
- 10) Section 664.740 (Operation and Maintenance of the Project) of this Part
- 11) Section 664.910 (Operation, Maintenance and Replacement Revenue System) of this Part
- 12) Section 664.930 (Dedicated Source of Revenue for Local Government Units) of this Part
- 13) Section 664.940 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part.

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section 664.410 Project Priority Determination

- a) Financial assistance from the PWSLP/ARRA will be provided only to local government units and eligible privately owned community water supplies for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 663.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 663 after the receipt by the Agency of both loan pre-applications pursuant to 664.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved project planning pursuant to Section 664.510 (Loan Applicant's Responsibilities During Project Planning) and Section 664.520

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(State Environmental Review) of this Part. For projects represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.

- c) Projects included in the Intended Use Plan will be selected from projects in the Project Priority List in priority order, provided the project is scheduled to initiate construction by December 31, 2009.
- d) The available funds awarded for a project may be limited by the Agency to reflect the amount of funds needed to meet cash flow demands for that project during the current funding cycle or to meet the PWSLP/ARRA funding availability. Any project that receives an adjustment to meet cash flow demands or the PWSLP/ARRA funding availability may have an opportunity for additional funding in future funding cycles as money becomes available.

Section 664.420 Pre-Application for Financial Assistance and Identification of Projects to be Funded

- a) Every loan applicant shall submit to the Agency a signed and dated pre-application form that includes at a minimum the following items:
 - 1) Legal name of applicant and eligibility status;
 - 2) Address;
 - 3) Authorized representative – name and title;
 - 4) Reason for project;
 - 5) Number of billed customers;
 - 6) Project description;
 - 7) Cost estimate; and
 - 8) Project schedule.
- b) Loan applicants seeking financial assistance must file a new pre-application annually.

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- c) A project with approved project planning may be added to the project priority list at any time by the submission of a pre-application.
- d) The Agency shall publish a list of the projects that are proposed for funding. These projects will be included in the Intended Use Plan.
- e) After March 31 of each year, the Agency may bypass projects on the Intended Use Plan that cannot meet the schedule to initiate construction by March 31 of that year. The Agency will evaluate projects in priority order and may offer loan commitments to other projects on the Project Priority List in accordance with Section 664.430 (Financial Assistance Application and Approval) of this Subpart.

Section 664.430 Financial Assistance Application and Approval

- a) In order to receive a loan commitment letter for financial assistance under the ARRA, the following documentation shall be submitted by the loan applicant and approved by the Agency:
 - 1) Planning Report that meets the requirements of Section 664.510 (Loan Applicant's Responsibilities During Project Planning) and 664.520 (State Environmental Review);
 - 2) Design documents, including plans and specifications, with a construction permit, if applicable;
 - 3) An enacted ordinance or other legally binding instrument authorizing the bonds, notes, security agreements or other evidence of indebtedness and an approved operation, maintenance and replacement revenue system in accordance with 664.910 (Operation, Maintenance and Replacement Revenue System) and documentation to support the loan applicant's ability to repay the loan in accordance with Section 664.920 (Financial Capability) and Section 664.930 (Dedicated Source of Revenue for Local Government Units) or Section 664.940 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part;
 - 4) A loan application form (Appendix B);
 - 5) An EPA Form 4700-4, Compliance Report; and

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- 6) An executed contract for design and construction related work in accordance with Section 664.630 (Contracts for Personal and Professional Services) of this Part if financing is being requested for these specific costs.
- b) In addition to the items identified in subsection (a), the Agency must have received the following bid documentation prior to the issuance of the Loan Agreement:
- 1) A certified copy of the published bid advertisement or advertisements;
 - 2) Any addenda issued by the loan applicant, if applicable;
 - 3) A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33;
 - 4) A copy of the bid tabulations;
 - 5) An analysis of the bids and recommendations for the award of the bids;
 - 6) A copy of the successful bid proposal or proposals;
 - 7) The notice of the applicant's intent to award; and
 - 8) A certification from the loan applicant that all other bid requirements have been satisfied, including bid bond requirements and other certifications as required by State and federal law.

Section 664.440 Fixed Loan Rate

The fixed loan rate shall be a simple annual rate of 0.00% for all public water supply facilities loans under the ARRA, administered through the PWSLP.

Section 664.450 Refinancing

- a) Design costs set forth in Section 664.460 (Limitation on Design Cost) of this Subpart, and bidding costs related to eligible construction contracts incurred prior to the award of the loan agreement, are eligible for refinancing.

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- b) Total eligible costs for projects that received a PWSLP Loan Agreement between October 1, 2008 and February 17, 2009 are eligible for refinancing to the ARRA program financial terms.

Section 664.460 Limitation on Design Cost

Allowable costs for design of the loan project will be limited to the actual cost incurred for design, up to a maximum percentage of the allowable as bid construction cost.

- a) For allowable as bid construction costs of \$500,000 or less, the design will be funded up to 15%;
- b) For allowable as bid construction costs of \$500,001 to \$2,000,000, the design will be funded up to 12%;
- c) For allowable as bid construction costs of \$2,000,001 to \$5,000,000, the design will be funded up to 10%;
- d) For allowable as bid construction costs of \$5,000,001 to \$10,000,000, the design will be funded up to 8%; and
- e) For allowable as bid construction costs of more than \$10,000,000, the design will be funded up to 7%.

Section 664.470 Limitation on Financial Assistance

The amount of financial assistance from the ARRA available to a loan applicant cannot exceed 50% of the total eligible project cost or \$5,000,000, whichever is less. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.

Section 664.480 Principal Forgiveness

All financial assistance from the ARRA shall be in the form of a 0.00% interest loan with principal forgiveness of 50% of the total ARRA funded amount. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.

Section 664.490 Financial Assistance to Privately Owned Community Water Supplies

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Loans to privately owned community water supplies, as defined in Section 664.130 (Definitions) of this Part, shall be limited to eligible privately owned community water supplies with 100 or more billed customers. Privately owned community water supplies with fewer than 100 billed customers are not eligible to receive financial assistance from the PWSLP/the ARRA.

SUBPART E: PROJECT PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section 664.510 Loan Applicant's Responsibilities During Project Planning

- a) The loan applicant shall provide project planning, which shall consist of plans and studies that are directly related to the construction of public water supply facilities, to maintain compliance with applicable State and federal requirements as specified in 35 Ill. Adm. Code, Subtitle F and the federal Safe Drinking Water Act while recognizing environmental and social conditions. The planning shall provide documentation on the existing need for the facilities for which loan assistance is being requested.
- b) If any information required to be furnished as part of a project plan has been developed separately, it shall be furnished and incorporated by reference in the project plan. Planning previously or collaterally accomplished under local, State or federal programs may be utilized to the extent applicable.
- c) The project plan shall be submitted to the Agency for approval. Where applicable, the applicant shall also submit drafts of any legally enforceable agreements or demonstrations of legal authority necessary to plan implementation.
- d) The project plan may include more than one construction project and may provide the basis for several subsequent projects. The Agency shall review any project plan that has previously served as the basis for a loan to determine if changes have occurred that require amendment of the plan for the subsequent project. If substantial changes have occurred that warrant revision or amendment of the plan as specified in Section 664.520 (State Environmental Review) of this Subpart, the loan applicant shall revise or amend and resubmit the plan for Agency approval in accordance with Section 664.520 (State Environmental Review) of this Subpart.
- e) A project plan shall include the following elements in sufficient detail to, at a minimum, comply with all applicable construction permit supporting data requirements of 35 Ill. Adm. Code 652.104:

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- 1) A complete description of the public water supply system of which the proposed project is a part, identification of any existing violations of federal or State public water supply regulations and identification of the needs to be addressed by the proposed project.
- 2) A discussion of the technical, financial and managerial considerations that form the basis for the applicant's selection of the proposed project. The relationship of the nature, size and capacity of the selected alternative to the needs to be served, including reserve capacity, shall be addressed. Also included shall be a discussion of the operational requirements of the selected alternative and provisions for disposal of waste by-products in accordance with State requirements.
- 3) A detailed description of the alternative selected for loan assistance, including preliminary engineering data, complete cost estimates for design and construction, one or more 8.5 by 11 inch site maps locating areas of construction and/or indirect impacts, and a projected schedule for completion. The engineering data shall include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit capacities, etc., sufficient to demonstrate that the proposed project will be designed in accordance with 35 Ill. Adm. Code 651 through 654.
- 4) Evidence of consultation with relevant federal and State agencies with documentation of project approval where required.
- 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for operating the facility and repayment of the proposed loan amount, as well as the impact of these costs on the system users.

Section 664.520 State Environmental Review

- a) Prior to making a final determination on the acceptability of any project plan, the Agency shall undertake an environmental review. The Agency may categorically exclude certain classes of projects from environmental review when, by virtue of their limited scope, the projects have no potential for negative environmental impacts.

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- b) The Agency shall not begin its environmental review until it has determined that the project plan conforms to the requirements of Section 664.510 (Loan Applicant's Responsibilities During Project Planning) of this Subpart, and that, based on the information available, all reasonable measures have been taken in the planning to avoid and mitigate negative environmental impacts.
- c) The scope of the Agency's environmental review shall include, but not be limited to, an assessment of the impacts of both the loan funded project and the overall planning on rare and endangered species, historic and cultural resources, prime agricultural land, air and water quality, recreational areas, wetlands, floodplains and other sensitive environmental areas. The review shall also assess the direct and indirect impacts of construction.
- d) For all projects requiring an environmental review, the Agency will assess the environmental impacts of the proposed project and prepare a written Preliminary Environmental Impacts Determination (PEID). The public will be given an opportunity to comment on the project plan and the Agency's environmental impacts assessment.
- e) The PEID shall be mailed to the loan applicant and other interested parties, inviting public comment. The loan applicant shall hold a public hearing on the plan and the Agency's PEID for the purpose of obtaining public comments. The public hearing will be held within 30 days after receipt of the Agency's PEID or within an alternative time period that is justified by the loan applicant and approved by the Agency. The loan applicant shall allow an additional 10 days from the date of the public hearing for the submission of written comments from the public.
- f) The time and place of the public hearing shall be conspicuously and adequately announced at least 10 days before the hearing. In addition, the Agency's PEID document shall be displayed at a convenient local site sufficiently prior to the hearing to obtain a level of public participation appropriate to the scope and impacts of the proposed project.
- g) The loan applicant shall provide the Agency with an accurate summary of all public comments received, together with any proposed amendments to the plan made in response to these comments.

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- h) Upon receipt of this public hearing summary and after the expiration of the 10 day written comment period, the Agency shall issue:
- 1) An unconditional approval of the plan (original or as amended); or
 - 2) A conditional approval of the plan with special conditions; or
 - 3) A disapproval of the plan based on evidence of significant negative environmental impacts for which appropriate mitigative measures have not been identified; or
 - 4) A determination of the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (42 USC 4332). The Agency may change its disapproval to approval or conditional approval based on the recommendations of the EIS.
- i) For projects categorically excluded from the environmental review process, the Agency shall provide to the applicant a Notice of Intent to Issue a Categorical Exclusion. The applicant shall publish the Notice in a newspaper of local record and allow 10 days for public comment. If no valid objection is raised to the Categorical Exclusion, the Agency shall issue an unconditional approval of the project plan. Should valid concerns be raised over potential environmental impacts, the Agency shall proceed with an environmental review under this Section 664.520 or issue a conditional approval when the applicant incorporates mitigative measures that would clearly resolve the environmental concerns.
- j) Additions to the project scope or changes to the location of proposed construction activity shall require an amendment to an approved project plan. Where the Agency determines that the proposed changes will not alter the previous environmental impacts findings, it will approve planning amendments by letter. In other cases, additional environmental review and public comment may be required.
- k) Agency project planning determinations made in accordance with subsection (h) shall be subject to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section 664.610 Requirements for Subagreements

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The intent of this Subpart is to provide for maximum open and free competition in the procurement of materials, goods and services for the construction projects funded from the PWSLP/the ARRA. Any procurement method, except as allowed under this Part that significantly minimizes open and free competition will be prohibited. The following procedures shall apply to subagreements:

- a) **Local Preference**
Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements under PWSLP/ARRA loans.
- b) **Profits**
Only fair and reasonable profits may be earned by contractors in subagreements under PWSLP/ARRA loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 664.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.
- c) **Loan Recipient Responsibility**
The loan recipient shall be responsible for the administration and successful accomplishment of the project for which PWSLP/ARRA loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. Such an individual or firm shall be deemed the loan recipient's agent and shall be subject to all the provisions of the loan agreement, including this Part, that apply to the loan recipient.
- d) **Privity of Contract**
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts) or to any solicitation or request for proposals under those subagreements.

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- e) Subagreements shall:
 - 1) Be directly related to the accomplishment of the loan recipient's approved work program;
 - 2) Be in the form of an executed written agreement (except for small purchases of \$25,000 or less);
 - 3) Be for monetary or in-kind consideration; and
 - 4) Not be in the nature of a grant or gift.
- f) Documentation
 - 1) Procurement records and files for purchases in excess of \$25,000 shall include the following:
 - A) The basis for contractor selection;
 - B) The justification for lack of competition, if competition appropriate to the type of project work to be performed is required but not obtained; and
 - C) The basis for award cost or price.
 - 2) Procurement documentation as described in subsection (f)(1) shall be retained by the loan recipient or contractor or contractors for the period required by Section 664.820 (Audit and Records) of this Part.
- g) Subagreements shall only be awarded to persons or organizations that:
 - 1) Have adequate financial resources for performance;
 - 2) Have the necessary experience, organization, technical qualifications and facilities, or a firm commitment, arrangement or ability to obtain these requirements;
 - 3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;

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- 4) Have a satisfactory record of integrity, judgment and performance;
 - 5) Have an adequate financial management system and audit procedure that is consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards;
 - 6) Maintain a standard of procurement in accordance with this Part;
 - 7) Maintain a property management system that provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
 - 8) Conform to the civil rights, equal employment opportunity (Appendix A, Exhibit B) and labor law requirements of this Part.
- h) Fraud and Other Unlawful or Corrupt Practices
- 1) The obtaining and administration of loans from the PWSLP/the ARRA, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.
 - 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices brought to its attention. The loan recipient shall advise the Agency immediately when any allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any matter.
- i) Negotiation of Subagreements
- All subagreements greater than \$25,000 shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent and not be in

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conflict with other State statutes. Procurements may be negotiated by the loan recipient, if approved by the Agency, for the following reasons:

- 1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement); or
- 2) The aggregate amount of the contract to be competitively negotiated is allowed by State law; or
- 3) The materials or services to be procured are available from only one person or firm; or
- 4) The procurement is for personal or professional services, or for any services to be rendered by an educational institution; or
- 5) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or
- 6) The procurement is for materials or services for which the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

Section 664.620 Construction Contracts

The following procedures shall apply to construction contracts (subagreements) awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured, and the notice to proceed.

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- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 664.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:
- 1) Evidence of Advertising
The loan recipient shall submit to the Agency a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for providing financial assistance from the PWSLP under the ARRA as set out in this Part, the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order 11246, as amended (Appendix A, Exhibit B). Bidders shall be notified that the procurement will be subject to the loan recipient's policy regarding the increased use of disadvantaged business enterprises, and that the bidders will be required to comply with section 1605 of the ARRA, which specify that all iron, steel and manufactured goods used in the project are produced in the United States.
 - 2) Adequate Bidding Documents
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
 - A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (Drawings and specifications may be made available for inspection instead of being furnished.);
 - B) The terms and conditions of the contract to be awarded;
 - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;
 - D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the PWSLP, and that

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neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract; and

- E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan applicant.
- 3) Representation and Certification
- A) A copy of subsections (b)(3)(B) and (C) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;
 - B) By submission of the bid, each bidder certifies, and in the case of a joint bid each party to the joint bid certifies, as to his or her own organization that, in connection with the bid:
 - i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
 - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
 - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33E of the Illinois Criminal Code of 1961 [720 ILCS 5/33E].
 - C) Each person signing the bid shall certify that:

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- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(3)(B); or
 - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that the persons have not participated, and will not participate, in any action contrary to subsection (b)(3)(B), and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(3)(B).
- 4) Addenda to Bidding Documents
If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the loan applicant shall send written addenda to all firms who have obtained bidding documents in time to be considered prior to the bid opening. When appropriate, the time period for submission of bids shall be extended. All addenda to the bidding documents shall be submitted to the Agency for approval prior to the bid opening.
- 5) Award to the Low, Responsive, Responsible Bidder
- A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award and the loan applicant's letter of intent to award or the official minutes of board approval.
 - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan applicant.

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- C) If the award is intended to be made to a firm that did not submit the lowest bid, prior to any award, the loan applicant shall submit to the Agency a written statement explaining why each lower bidder was deemed not responsive or not responsible.
- c) Negotiations of Contract Amendments (Change Orders)
- 1) **Loan Recipient Responsibility**
The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:
 - A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
 - B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
 - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
 - 2) **Changes in Contract Price or Time**
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
 - 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
 - 4) **Agency Review**
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:
 - A) A description of the changed work;

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- B) The contractor's proposal, itemizing the cost and time to complete the changed work;
 - C) The loan recipient's or engineer's estimate of the cost and time to complete the changes;
 - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and
 - E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) Required Construction Contract Provisions
Each construction contract shall include the following provisions:
- 1) Audit; Access to Records
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c) (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency or any of their authorized representatives shall have access to the books, records, documents, and other evidence for purposes of inspection, audit and copying. The contractor shall provide facilities for access and inspection.
 - B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or

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her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.

- C) Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection (d)(1)(A). Where the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of the dispute, appeal, litigation, claim or exception.
- F) The right of access will generally be exercised with respect to financial records under:
 - i) Negotiated prime contracts;
 - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
 - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
- G) The right of access will generally not be exercised with respect to a prime contract, subcontract or purchase order awarded after

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effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:

- i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
 - ii) If there is any indication that fraud, gross abuse or corrupt practices may be involved in the award or performance of the contract or subcontract.
- 2) **Covenant Against Contingent Fees**
The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee.
 - 3) **Wage Provisions**
The contractor shall pay prevailing wages in accordance with the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor.
 - 4) **Disadvantaged Business Enterprise Requirements**
The contractor shall provide evidence, including but not limited to, a copy of the advertisement(s) and the record of negotiation, that the contractor has taken affirmative steps in accordance with 40 CFR 33 to assure disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services, consistent with the provisions of the Agency's Operating Agreement with USEPA.
 - 5) **American Iron, Steel and Manufactured Goods Provisions**
The contract shall require the successful bidder(s) to certify compliance with section 1605 of the ARRA, which requires that all iron, steel and manufactured goods used in the project are produced in the United States.
 - 6) **Debarment and Suspension Provisions**

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The contract shall require the successful bidder(s) to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).

- 7) **Nonsegregated Facilities Provisions**
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) **Subcontracts under Construction Contracts**
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with the following:
 - 1) All applicable provisions of federal, State and local law;
 - 2) All provisions of this Part regarding fraud and other unlawful or corrupt practices;
 - 3) All provisions of this Part with respect to access to facilities, records and audit of records; and
 - 4) All provisions of subsection (d)(6) that require a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
- f) **Contractor Bankruptcy**
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

Section 664.630 Contracts for Personal and Professional Services

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All subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
 - 1) **Disadvantaged Business Enterprise Requirements**
Evidence, such as, but not limited to, a copy of the advertisement or advertisements and the record of negotiation in accordance with 40 CFR 33 that affirmative steps have been taken to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services, consistent with the provisions of the Agency's Operating Agreement with the USEPA;
 - 2) An audit and access to records clause that provides as follows:
 - A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
 - B) Books, records, documents and other evidence directly pertinent to performance of PWSLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
 - C) Audits conducted pursuant to this subsection (a)(2) shall be in accordance with generally accepted auditing standards.
 - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

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- E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 664.650 (Disputes) of this Subpart, litigation, the settlement of claims arising out of project performance costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception;
- 3) A covenant against contingent fees clause as follows:
"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee";
- 4) Debarment and Suspension Certification
A Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A);
- 5) A description of the scope and extent of the project work;
- 6) The schedule for performance and completion of the contract work, including, where appropriate, dates for completion of significant project tasks; and
- 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.

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- c) If, at the time of contract execution, any of the elements required in this Section cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

Section 664.640 Compliance with Procurement Requirements for Construction Contracts

- a) **Loan Applicant Responsibility**

The loan applicant shall be responsible for selecting the low, responsive and responsible bidder or other contractor in accordance with applicable requirements of State, federal and local laws and ordinances, as well as for the specific requirements of the loan agreement directly affecting procurement. The loan recipient shall also be responsible for the initial resolution of complaints based upon alleged violations. Any complaints made to the Agency concerning any alleged violation of law in the procurement of construction services or materials for a project involving construction work will be referred to the loan applicant for resolution. The loan applicant shall promptly determine each complaint on its merits, and shall allow the complainant and any other party who may be adversely affected to state in writing or at a conference the basis for its views concerning the proposed procurement. The loan applicant shall promptly furnish to the complainant and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering or legal opinion providing a justification for its determination.
- b) **Time Limitations**

Complaints should be made as early as possible during the procurement process, preferably prior to the bid opening, to avoid disruption of the procurement process. The complaint shall be mailed (certified mail, return receipt requested), or otherwise delivered, no later than 5 working days after the complainant becomes aware of an alleged violation. If there is no agreement between the parties within 7 days following the loan applicant's response, unless all bids are rejected, the matter shall be resolved in accordance with subsection (c).
- c) **Remedies**

All claims, counter-claims, disputes and other matters in question between the recipient and the contractor arising out of, or relating to, a subagreement or its breach shall be decided by arbitration if the parties agree, or in a court of competent jurisdiction within the State.
- d) **Deferral of Procurement Action**

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If the determination of a complaint by the loan recipient is adverse to the complainant, the loan recipient shall defer issuance of its solicitation or award or notice to proceed under the contract, as appropriate, for 7 days after mailing or delivery of the determination. If the determination (whether made by the loan recipient, the arbitrator or the court) is favorable to the complainant, the terms of the solicitation shall be revised or the contract shall be awarded, as appropriate, in accordance with the determination.

Section 664.650 Disputes

- a) Only the loan recipient may appeal to the Agency in its own name and for its own benefit, under this provision, with respect to its subagreements. Neither a contractor nor a subcontractor may prosecute an appeal under the disputes provision of a loan in its own name or interest.
- b) Any dispute arising under this loan that is not disposed of by agreement shall be decided by the Director, or his or her authorized representative, who shall render a decision in writing and mail or otherwise furnish it to the loan recipient. The decision of the Director shall be in accordance with this Part and shall be final and conclusive.
- c) The disputes clause shall not preclude the Director from considering questions of law in any decision.

Section 664.660 Indemnity

The loan recipient shall assume the entire risk, responsibility and liability for all loss or damage to property owned by the loan recipient, the Agency or third persons, and for any injury to, or death of, any person (including employees of the loan recipient) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of the PWSLP/ARRA loan. The loan recipient shall indemnify, save harmless and defend the State of Illinois and the Agency from all claims for loss, damage, injury or death, whether caused by the negligence of the State of Illinois or the Agency or their agents or employees or otherwise, consistent with the provisions of Section 1 of the Construction Contract Indemnification for Negligence Act [740 ILCS 35/1]. The loan recipient shall require that all its contractors and subcontractors agree in writing that they will look solely to the loan recipient for performance of the contract or satisfaction of all claims arising under the contract.

Section 664.670 Covenant Against Contingent Fees

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The loan recipient shall warrant that no person or agency has been employed or retained to solicit or secure a PWSLP/ARRA loan upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul the loan in accordance with Section 664.310 (Noncompliance with Loan Procedures) of this Part or to deduct from the loan, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee.

SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT

Section 664.710 Construction Initiation

Upon approval by the Agency of the loan applicant's financial assistance application in accordance with Section 664.430 (Financial Assistance Application and Approval) of this Part, and subject to the availability of funds, the Agency will issue the loan agreement and authorize the initiation of construction.

Section 664.720 Project Changes

- a) Prior approval of the Agency is required for any project change that may:
 - 1) Increase the amount of loan funds needed to complete the project;
 - 2) Alter the design or scope of the project;
 - 3) Extend any contract or loan completion date for the project;
 - 4) Alter the location, size, capacity or quality of any major item of equipment; or
 - 5) Alter the scope of the project by changing the methodologies or personnel to be used as agreed to at the time the loan was issued.
- b) The Agency will approve project changes that it determines are cost-effective and within the overall scope of the loan project, based on approved project planning.
- c) The loan recipient shall promptly notify the Agency, in writing, of all project changes. Failure to give timely notice of proposed project changes, or action by

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the loan recipient that is not consistent with the Agency's determination on those changes, may result in:

- 1) Disallowance of loan participation for costs incurred that are attributable to the change; and
- 2) Termination of the loan.

Section 664.730 Construction Engineering

The loan recipient shall provide construction engineering and project monitoring to assure that the construction substantially conforms with the approved plans and specifications.

Section 664.740 Operation and Maintenance of the Project

In order for the Agency to approve the final inspection for the project, the loan recipient must certify that it has a certified operator and that it has provided the following training and operation and maintenance documents:

- a) Training pertaining to the proper operation and maintenance of the equipment and process units included in the project.
- b) An operation and maintenance reference library that includes, but is not limited to, the following:
 - 1) Manufacturer's literature, shop drawings and warranties;
 - 2) The plans of record with valve indices for the equipment and process units included in the project; and
 - 3) A maintenance schedule for the equipment and process units included in the project.
- c) Training pertaining to the general operation of public water supply facilities or distribution systems, consisting of an operator self-study course such as, but not limited to, "Water Treatment Plant Operation", Volumes I and II, or "Small Water System Operation and Maintenance", or "Water Distribution System Operation and Maintenance", California State University, Sacramento.

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Section 664.750 Final Inspection

The loan recipient shall notify the Agency in writing within 30 days after completion of project construction and shall submit the final change order, along with the contractor's final costs, to the Agency. The plans of record shall be forwarded to the appropriate Agency regional office. The Agency shall schedule the final inspection within 60 days after the receipt of notice of completion, provided that all necessary change orders have been submitted and approved.

SUBPART H: REQUIREMENTS APPLICABLE TO
ACCESS, AUDITING AND RECORDS**Section 664.810 Access**

- a) The Agency and its designated representatives shall have access, during normal business hours and at any other time during which work is being performed, to the premises where any portion of the work for which the PWSLP/ARRA loan was provided is being performed. After final loan closing, Agency personnel or any authorized Agency representative shall have access to the project records as defined in Section 664.820 (Audit and Records) of this Subpart and to the project site during normal business hours, to the full extent of the loan recipient's right to access.
- b) Every contract entered into by the loan recipient for construction work, and every subagreement, shall provide Agency representatives with such access to the work. The contractor or subcontractor shall provide facilities for access and inspection. The contract or subagreement shall also provide that the Agency or any authorized representative shall have access to any books, documents, papers and records that are pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions.
- c) Failure by the loan recipient or any of its contractors or subcontractors to provide access, after 10 days written notice from the Agency, shall be cause for termination of the loan pursuant to Section 664.330 (Termination) of this Part, and refund to the State of Illinois for deposit into PWSLP any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section shall repay any loan funds previously spent.

Section 664.820 Audit and Records

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- a) The loan recipient shall maintain books, records, documents, reports and other evidentiary material, and accounting procedures and practices consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- b) For purposes of this Section, "records" shall include, but not be limited to:
 - 1) Documentation of the receipt and disposition by the loan recipient of all financial assistance received for the project, including both State financial assistance and any matching share or cost sharing; and
 - 2) Documentation of the costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the loan has been provided.
- c) The loan recipient's facilities, or any facilities engaged in the performance of the PWSLP/ARRA loan project, and the loan recipient's records shall be subject to inspection and audit by the Agency or its authorized representative, at the times specified in Section 664.810 (Access) of this Subpart.
- d) The loan recipient shall preserve and make its records available to the Agency or its authorized representative for the following periods:
 - 1) For all costs associated with design and construction, for 3 years after final loan closing;
 - 2) For all other accounting records concerning the loan, for 3 years from the date of the transaction; and
 - 3) For any longer period required by law or by subsections (e) and (f).
- e) If the loan is completely or partially terminated, the records relating to the terminated work shall be preserved and made available for 3 years after any resulting final termination settlement.
- f) Records that relate to appeals under the "Disputes" clause in Section 664.650 (Disputes) of this Part, litigation or the settlement of claims arising out of the performance of the PWSLP loan project, or to project costs and expenses to which

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exception has been taken by the Agency or its authorized representatives, shall be retained until the appeals, litigation, claims or exceptions have been completed.

- g) Failure of the loan recipient or its contractors or subcontractors to make records available to the Agency as required by Section 664.810 (Access) of this Subpart after 10 days written notice shall be cause for termination of the loan, pursuant to Section 664.330 (Termination) of this Part and for refund to the State of Illinois for deposit into the PWSLP of any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section shall repay any loan funds previously spent.

Section 664.830 Single Audit Act

A local government unit or a privately owned community water supply having not-for-profit status that receives loan assistance shall comply with the provisions of the Single Audit Act of 1996 (31 USC 7501 et seq.).

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

Section 664.910 Operation, Maintenance and Replacement Revenue System

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's source of revenue for operation, maintenance and replacement (O, M & R) costs. The source of revenue must be enacted and enforceable, if appropriate, before the first loan disbursement can be made.
- b) The Agency shall approve the O, M & R revenue system in accordance with the following criteria:
- 1) For the first year of operation of new facilities, operation, maintenance and replacement costs shall be based upon past experience or some other rational method that can be demonstrated to be applicable.
 - 2) The loan recipient shall review annually and revise periodically the revenue source to reflect actual water works operation, maintenance and replacement costs. The Agency may request a report on the status of the projected costs, actual costs, revenue generated and fund balances at any time.

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- 3) The revenue source shall generate sufficient revenue to offset the cost of all water works operation, maintenance and replacement required to be provided by the loan recipient.
 - 4) If the project is for a regional community water supply facility that distributes water to other public water supplies, appropriate municipal ordinances, intergovernmental or service agreements or other appropriate authorizations must be submitted.
- c) Upon approval of a loan recipient's O, M & R revenue source, the implementation and maintenance of the source shall become a condition of the loan subject to Section 664.310 (Noncompliance with Loan Procedures) of this Part.
 - d) The Agency or its authorized representative shall have access to all books, documents, papers and records of the loan recipient for the purpose of making audit, examination, excerpts and transcriptions in order to ensure compliance with subsection (b).

Section 664.920 Financial Capability

- a) The loan applicant shall demonstrate to the Agency that it has the necessary legal, financial, managerial and technical capability to:
 - 1) Construct, operate and maintain the project for the life of the public water supply facilities;
 - 2) Retire the loan, including the execution of any necessary legally enforceable agreements and any enactments necessary to recover adequate capital costs to repay the loan; and
 - 3) Meet any covenants and requirements in the loan agreement.
- b) To demonstrate financial, managerial and technical capability, the loan applicant shall, at a minimum, show that:
 - 1) It is empowered under law to own, operate and maintain a public water supply facility, including the facilities to be constructed under the loan;

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- 2) It has the necessary easements, titles, permits and legally enforceable agreements for loan project implementation, as identified in the project plan; and
 - 3) It has or will have the necessary qualified personnel to operate and maintain the facility.
- c) The financial capability demonstration shall be submitted to the Agency for approval and shall contain detailed project costs, existing and proposed operation, maintenance and replacement costs, existing and proposed local capital costs, and historical information over the past 3 years consisting of audited annual financial statements, tax returns, Illinois Commerce Commission annual reports, bond ratings, number of billed customers and tax rate levies.
 - d) The Agency may suggest mitigative measures to improve the loan applicant's financial capability to undertake the project, including but not limited to, acquisition of grant funding, reduction of project costs, additional or different sources of revenues, efforts to reduce the number of delinquent billed customers and changes to existing financial practices that may threaten generation of adequate revenues.
 - e) The Agency may require a loan term of less than the 20 year maximum. In evaluating the appropriateness of alternative loan terms, the Agency shall consider such factors as the scope of the proposed project, the impacts of alternative loan terms on user fees, and the overall cost of the project.
 - f) The Agency may also utilize available credit reporting services.

Section 664.930 Dedicated Source of Revenue for Local Government Units

- a) A source of revenue shall be dedicated and pledged to make the loan repayments. Prior to loan approval, the Agency shall review the proposed dedicated and pledged revenue source to assure that it will generate revenues adequate to make the loan repayments and will provide a continuing source of revenue adequate to make loan repayments for the term of the loan. If the source of revenue is pledged in a subordinate position to a revenue bond ordinance, the covenants regarding coverage and reserve for the revenue source shall be equivalent to those in the revenue bond ordinance. At a minimum, the reserve account shall be equal to the annual loan repayment amount funded within 2 years after the loan award.

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- b) The necessary legislative enactments to dedicate and pledge the source of revenue must be in place before the Agency can make the first loan disbursement.
- c) The loan recipient shall maintain a separate account in its books to record the dedicated revenues for loan repayment.
- d) The loan recipient shall, for the term of the loan, review and adjust the dedicated source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient shall timely notify the Agency and submit to the Agency for approval all proposed changes to the dedicated source of revenue.
- e) Upon request, the loan recipient shall submit to the Agency a statement on the status of the account required by subsection (c) that contains the status of the dedicated revenue account, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review will be based on, but not limited to, ensuring that the dedicated source of revenue is legally authorized, generates sufficient revenue and is otherwise in accordance with this Part.
- f) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the dedicated revenue source and restructure it as necessary.

Section 664.940 Source of Revenue and Security for Privately Owned Community Water Supplies

- a) The loan applicant must provide a detailed demonstration that there is an adequate source of revenue to repay the principal due on the loan. The loan applicant must also demonstrate that there is adequate security for the full amount of the loan. This shall include, but is not limited to, the following:
 - 1) The audited financial statements and tax returns required under Section 664.920 of this Subpart and the calculation of the ratios set forth in the Risk Management Association (RMA) Annual Statement Studies for the North American Industry Classification System (NAICS) #221310. The statements must show a positive cash flow for all 3 years. 50% of the ratios must fall in the upper 2 quartiles when compared to the RMA Annual Statement Studies for NAICS #221310.

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- 2) Any rate increase required to assure that adequate revenues will be generated to make the loan repayments must be adopted in a legally binding manner prior to the first loan disbursement. When applicable, approval of the rate increase by the Illinois Commerce Commission will be required.
 - 3) Appropriate legal documents will be provided to enable the Agency to perfect its security interest in the revenues of the system and other personal properties offered as security by filing the necessary information under the Uniform Commercial Code.
 - 4) The loan applicant must submit a legal description and current appraisal by a licensed appraiser of real property to be used for collateral. The mortgage must be executed prior to the issuance of the loan.
 - 5) Approval from the Illinois Commerce Commission to incur debt, if applicable.
- b) The loan recipient must maintain a separate accounting in its books to record the funds available for loan repayment.
 - c) The loan recipient must, for the term of the loan, review and adjust the source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient must timely notify the Agency of, and submit to the Agency for approval, all proposed changes to the source of revenue.
 - d) Upon request, the loan recipient shall submit to the Agency the status of the funds available for repayment of the loan, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review will be based on, but not limited to, ensuring that the source of revenue generates sufficient revenue and is otherwise in accordance with this Part.
 - e) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the revenue source and restructure it as necessary.

Section 664.950 Floodplain Insurance

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- a) If the loan project includes insurable structures that will be located within a designated floodplain area as defined in the National Flood Insurance Act of 1968 (42 USC 4001-4127), the loan recipient shall furnish written evidence that it is participating in the National Flood Insurance Program or that the construction areas have received official exclusion from the flood insurance requirements by the Federal Emergency Management Agency.
- b) The loan recipient (or the construction contractor, as appropriate) shall acquire any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, and maintain the insurance for the entire useful life of the insurable structures.
- c) The amount of insurance required shall be the lesser of the total project cost, excluding facilities that are uninsurable under the National Flood Insurance Program, or the maximum limit of coverage made available to the loan recipient under the National Flood Insurance Act of 1968.
- d) The required insurance premium for the period of construction shall be an allowable project cost under Section 664.1010 (Determination of Allowable Costs) of this Part.

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

Section 664.1010 Determination of Allowable Costs

The loan recipient shall be paid, upon request, in accordance with Section 664.1030 (Disbursement of Loan Funds) of this Subpart, for all costs that are within the scope of the approved project, not to exceed the total amount of the loan, and that are determined to be allowable in accordance with the following criteria:

- a) **Allowable Project Costs**
All reasonable and necessary costs directly attributable to the design and construction of an eligible, loan assisted public water supply project that are not excluded from loan funding by law or non-waivable regulations. Categories of necessary costs include, but are not limited to, the following:
 - 1) The direct purchase of materials, equipment and personal services specifically necessary for the completion of a loan funded project;

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- 2) Professional and consultant services contracts necessary for design, bidding and construction of a loan funded project, except as elsewhere limited by this Part;
 - 3) Costs under approved construction contracts; and
 - 4) Costs for premiums for required flood insurance during the project construction period.
- b) **Ineligible Costs**
Categories of costs that are ineligible for loan assistance, and are not subject to the "reasonable and necessary" test of allowability include, but are not limited to, the following:
- 1) Costs for preparing a project planning document;
 - 2) Costs outside the scope of the approved project plan;
 - 3) Site acquisition, including easement compensation;
 - 4) Construction of any facilities that do not clearly fall within the definition of a community water supply facility as contained in the federal Safe Drinking Water Act; and
 - 5) Costs of projects whose main purpose is fire protection or servicing future growth.
- c) **Disputes Concerning Allowable Costs**
The loan recipient shall seek to resolve any questions relating to cost allowability or allocation at the earliest opportunity. Final determinations by the Director concerning the allowability of costs shall be conclusive.

Section 664.1020 Use of Loan Funds and Payment of Unallowable Costs

- a) Loan funds shall be expended solely for approved allowable costs incurred in the design and construction of the project.

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- b) The loan recipient shall agree to pay the unallowable costs associated with the project, as well as all allowable costs that exceed the amount of the loan, and shall construct the project or cause it to be constructed to final completion in accordance with the plans and specifications and on the schedule approved by the Agency.
- c) The loan recipient shall commit itself to complete the construction of the operable public water supply facilities.

Section 664.1030 Disbursement of Loan Funds

- a) Disbursements are subject to the appropriation of funds by the General Assembly and the availability of cash deposited into the PWSLP from drawdowns from the USEPA Automated Clearing House, repayments of existing loans, interest earnings on money in the PWSLP, and money deposited into the PWSLP from other sources.
- b) Disbursements shall be made as follows:
 - 1) After the receipt of a fully executed loan agreement, disbursement requests must be sent directly to the Agency. Actual disbursements shall be processed in accordance with the loan agreement.
 - 2) Disbursements will be processed based on costs incurred that are due and payable, as evidenced by invoices. The Agency may withhold any disbursement for a violation of the loan agreement conditions.
- c) The loan recipient shall make prompt payment to the contractor.
- d) The State share of any refunds, rebates, credits or other amounts (including any interest) accruing to or received by the loan recipient with respect to the project that are properly allocable to costs for which loan funds have been disbursed must be paid, minus any reasonable expenses incurred in securing these funds, to the State of Illinois for deposit in the PWSLP.
- e) Before the final principal amount of the loan can be established:
 - 1) The Agency shall conduct a final inspection and a project review to insure that all applicable loan conditions have been satisfied; and

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- 2) The loan recipient must submit to the Agency a final waiver from the contractor and a Certification of Payment that all bills have been paid.
- f) The loan recipient must also submit a release, discharging the State of Illinois and its officers, agents and employees from all liabilities, obligations and claims arising out of the project work or under the loan, subject only to such exceptions that may be specified in the release.
- g) Any use of loan funds at variance with this Part shall result in repayment of those loan funds to the State of Illinois for deposit into the PWSLP.

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT**Section 664.1110 Loan Repayment to the Agency**

Loan repayment to the Agency shall be in accordance with the loan repayment provisions contained in the loan agreement.

- a) Principal forgiveness of 50% will be applied to the total amount of loan disbursements from the ARRA funds. The loan repayment amount shall be calculated based upon 50% of the total amount of loan disbursements from ARRA funds.
- b) Loan repayments shall commence not later than 6 months after the initiation of the loan repayment period and shall be due semiannually for local government units and quarterly for privately owned community water supplies unless the Agency determines that the source of revenue justifies an alternative repayment plan.
- c) After the initiation of the loan repayment period date in the loan agreement, the Agency shall set a principal amount and give the loan recipient an interim repayment schedule.
- d) After a final cost review of the project, the Agency shall establish the final principal amount and give the loan recipient a final repayment schedule.

Section 664.1120 Delinquent Loan Repayments

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- a) *In the event that a timely payment is not made by a loan recipient according to the loan schedule of repayment, the loan recipient shall notify the Agency in writing within 15 days after the repayment due date. The notification shall state the reasons the repayment was not timely tendered and the circumstances under which the late repayment will be satisfied, and shall contain binding commitments to assure future repayments. After receipt of this notification, the Agency shall accept the plan or take action in accordance with subsection (b).*
- b) *If a loan recipient fails to comply with subsection (a), the Agency shall promptly issue a notice of delinquency to the loan recipient which shall require a written response within 15 days. The notice of delinquency shall require that the loan recipient revise its rates, fees and charges to meet its obligations or take other specified actions as may be appropriate to remedy the delinquency and to assure future repayments.*
- c) *In the event that the loan recipient fails to timely or adequately respond to a notice of delinquency, or fails to meet any obligations made pursuant to subsections (a) and (b), the Agency shall pursue the collection of the amounts past due, the outstanding loan balance and the costs incurred thereby, either pursuant to the Illinois State Collection Act of 1986 [30 ILCS 210] or by any other lawful means, including the taking of title by foreclosure or otherwise to any project or other property pledged, mortgaged, encumbered or otherwise available as security or collateral. [415 ILCS 5/19.6]*

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Section 664.APPENDIX A Executive Orders**Section 664.EXHIBIT A Executive Order 12549**

February 18, 1986, 51 F.R. 6370

DEBARMENT AND SUSPENSION

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

Section 1.

- a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.
- b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.
- c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Section 2. To the extent permitted by law, Executive departments and agencies shall:

- a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.
- b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.

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- c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.
- Section 3. Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.
- Section 4. There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.
- Section 5. The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.
- Section 6. The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

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Section 7. The Director of the Office of Management and Budget shall report to the President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make such recommendations as are appropriate further to curb fraud, waste, and abuse.

THE WHITE HOUSE
February 18, 1986

RONALD REAGAN

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Section 664.APPENDIX A Executive Orders**Section 664.EXHIBIT B Executive Order 11246**EQUAL EMPLOYMENT OPPORTUNITY
EXECUTIVE ORDER 11246, AS AMENDED

Executive Order 11246 – Equal Employment Opportunity

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I – Nondiscrimination in Government Employment

Part II – Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A – Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

Subpart B – Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor

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agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of

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the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
- a) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
 - b) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
 - c) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or

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any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

- SEC. 204. The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

Subpart C – Powers and Duties of the Secretary of Labor and the Contracting Agencies

- SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

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- SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.
- a) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.
- SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.
- SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.
- a) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D – Sanctions and Penalties

- SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

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- 1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
- 2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
- 3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
- 4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
- 5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
- 6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.
- 7) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be

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instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

- SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.
- SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.
- SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

Subpart E – Certificates of Merit

- SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.
- SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.
- SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

ENVIRONMENTAL PROTECTION AGENCY

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Part III – Nondiscrimination Provisions in Federally Assisted Construction Contracts

- SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.
- SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
- a) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.
 - b) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with

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respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

- SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.
- a) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.
- b) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.
- SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

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Part IV – Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

- a) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

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Section 664.APPENDIX B Loan Application Form

Applicant Information

L17# _____

1. Legal Name of Applicant: _____

2. Applicant Address: _____

Project Description: _____

Federal Taxpayer Identification Number: _____

Home Rule Non-Home Rule

3. Authorized Representative:

Name: _____ Title: _____

Phone: _____ Email: _____

4. Engineer:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

5. Attorney:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

6. Include detailed construction cost estimate in bid format as part of this application and summarize below:

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Construction	\$
	\$
	\$
Legal/Financial	\$
Design Engineering	\$
Construction Engineering	\$
Other	\$
Contingency	\$
	<hr/>
Total	\$

7. Amount requested for loan \$ _____

8. Loan repayment period requested (maximum term is 20 years): _____

20 Years

Other (____ number of years)

9. List any other proposed sources of funding in addition to loan request:

Source: _____ Amount: _____

Date Available: _____

10. Project Schedule (Indicate "complete" or anticipated date of completion as appropriate)

a) Approved Project Planning:

b) Plans and Specifications completed and submitted to Illinois EPA: _____

c) Illinois EPA Permit issued: _____

d) Approved Operation, Maintenance and Replacement Revenue System and Dedicated Source of Revenue: _____

e) Advertise for Bids: _____

f) Initiation of Construction: _____

g) Completion of Construction: _____

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CERTIFICATION REGARDING PROJECT SITE, RIGHTS-OF-WAY, EASEMENTS, AND PERMITS

1. The applicant has investigated and ascertained the location of the site or sites, rights-of-way, and easements being provided for the facilities in its application for loan assistance. In my opinion, the applicant has a sufficient legal interest in the said site or sites, rights-of-way, and easements to permit the building of such facilities thereon and to permit the operation and maintenance of such facilities thereon during the estimated life of the facility by the applicant after the completion of construction.
2. The loan applicant has complied with the provisions of 49 CFR 24 as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601 et seq.).
3. The loan applicant has obtained all the necessary permits as indicated below:

<u>Type of Permit</u>	<u>Permit Number</u>	<u>Date Issued</u>
Army Corps of Eng. 404	_____	_____
IL Dept. of Trans.	_____	_____
County Highway	_____	_____
Other	_____	_____

Loan Program Certifications

- Whereas, the application provisions for loans from the Public Water Supply Loan Program require that the loan applicant provide the following certifications and assurances:

The loan applicant hereby agrees to pay all project costs not covered by the loan. If the project costs provided by the applicant exceed \$10,000, please provide the following information:

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Amount to be provided by applicant \$ _____

Source of funds _____

- The loan applicant hereby certifies that it has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project.
- The loan applicant hereby certifies that no unlawful or corrupt practice has taken place in the planning or design of the proposed project.
- The loan applicant hereby certifies that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project.
- The loan applicant hereby certifies that it is not barred from being awarded a contract or subcontract under Section 10.1 of the Illinois Purchasing Act.

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant to the best of its knowledge and belief that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

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- d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

INTENT REGARDING NATIONAL FLOOD INSURANCE

Whereas application provisions for loans from the Public Water Supply Loan Program require compliance with the National Flood Insurance Act 1968, as amended, and

Whereas the costs of securing and maintaining flood insurance are eligible for loan participation during the approved construction period, and

Whereas failure to secure flood insurance for eligible construction located in designated flood hazard areas will cause this construction to become ineligible for loan funds:

Now therefore, be it resolved that the _____ of _____ will cooperate and coordinate with the National Flood Insurance Program to acquire and maintain any flood insurance made available for Project L17# _____ for the entire useful life of the insurable construction pursuant to the Flood Insurance Act of 1968, as amended, and that it will secure said flood insurance for each insurable structure, as soon as said insurance is available and will notify the Illinois Environmental Protection Agency in writing that the National Flood Insurance requirement has been satisfied.

AUTHORIZATION OF A REPRESENTATIVE TO SIGN LOAN DOCUMENTS

Whereas, application provisions for loans from the Public Water Supply Loan Program for construction of public water supply facilities require that the _____ of _____ authorize a representative to sign the loan application forms and supporting documents; therefore, be it resolved by the _____ of _____ that _____ is hereby authorized to sign all loan application forms and documents.

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I, _____ hereby verify that the above information is, to the best of my knowledge, true and correct.

Date: _____ Signed by: _____

(Authorized Representative)

Title: _____

Attested by: _____

Financial Information Requirements

Prior to issuance of a loan agreement, the applicant must demonstrate to the Agency that it possesses the necessary technical, legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the facility and to retire the loan in accordance with the schedule to be contained in the loan agreement. The applicant must provide sufficient information for the Agency to determine that the applicant is financially capable and has pledged a dedicated revenue source that is adequate to retire the debt and meet any covenants and requirements in the loan agreement. The applicant also must demonstrate that an Operation, Maintenance and Replacement (OM&R) Revenue System has been developed that generates adequate revenues to cover OM&R costs. This can be accomplished by the development and the enactment of a new OM&R Revenue System or the demonstration that a system previously approved by the Agency has been adequately maintained, is being enforced, and will continue to produce adequate revenues.

In order to provide guidance to potential loan recipients, this brief summary of the loan rules, review procedures, and the information that must be submitted for the Agency's review is being provided along with the attached checklist.

Financial Capability

The Agency requires that the applicant demonstrate that it has the legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the public water supply facilities and to retire the loan. The applicant must also demonstrate the ability to meet any covenants contained in the loan agreement.

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The Agency's review will be conducted using items submitted as part of the loan application including our review of the Dedicated Source of Revenue and the OM&R Revenue System. In addition, applicants must furnish the last fiscal year's audited financial statements. If we are unable to determine that the applicant is financially capable, the Agency may require additional financial data be submitted.

Dedicated Source of Revenue

The Agency requires that specific sources of revenue must be dedicated and pledged to make the loan repayments. Prior to the Agency's approval of the dedicated source of revenue, the applicant must demonstrate that the revenue source will generate adequate revenues to make loan repayments for the term of the loan. The term of the loan will be specified in the loan agreement but shall not exceed 20 years from the initiation of operation date contained in the loan agreement. Additional points that must be considered during the development of the dedicated source of revenue are:

- The dedicated source of revenue is usually pledged by the loan applicant in the form of an adopted ordinance that pledges a specific and dedicated source of revenue for repayment of the loan. The adopted ordinance will in most cases pledge a very stable source of revenue, such as revenues of the system, in the form of a revenue bond. General obligation and alternate bond ordinances are also acceptable.
- In the case of revenue bonds, the Agency requires that debt service coverage requirements for the IEPA loan be equal to any outstanding senior debt that is payable from revenues of the system. If a water service charge is used, the water rate and rate ordinance must be adopted prior to the first disbursement. State law requires a 1.25 x coverage test for alternate bonds, and parity revenue bonds must also meet the covenants made to outstanding investors.
- The Agency requires that the applicant furnish a legal opinion concerning the acceptability of the ordinance and other elements of the debt instrument selected for repayment of the loan. This opinion must address the validity and enforceability of the loan recipient's obligations and the absence of conflicts with other agreements, bonds or ordinances. Retention of bond counsel is optional.

OM&R Revenue System

The applicant's OM&R Revenue System must generate adequate revenues to cover OM&R costs.

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If the applicant has a previously approved OM&R Revenue System, the Agency will review the system to ascertain that the system was enacted and has been maintained in accordance with the previous approval and will produce adequate revenues.

Applicant: _____

L17#: _____

FINANCIAL INFORMATION CHECKLIST

Please answer or submit information indicated, as appropriate.

A. Dedicated source of revenue

- 1. Home Rule Non-Home Rule
- 2. Type of loan instrument
 - a. General Obligation Debt
 - b. Alternate (double barreled) bonds with property tax levy that pledges an alternate revenue source of _____
 - c. Water Sewer Combined System Revenues – Senior Lien
 - d. Water Sewer Combined System Revenues – Subordinate Lien
- 3. Authority of applicant to issue debt
 - a. Home rule powers
 - b. Specific authorizing statute: _____ ILCS _____
 - c. Other (specify)
- 4. Copy of certified ordinance authorizing debt must be submitted along with existing ordinances if a subordinate lien is proposed. If this is a subordinate lien, the certified ordinance authorizing debt must have provisions for equivalent accounts and coverage.

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5. Signed legal opinion with respect to the validity and enforceability of the applicant's obligations (bond ordinance) and the absence of conflicts with other agreements, bonds or ordinances.
6. A detailed demonstration that the dedicated source of revenue will provide adequate revenues to repay the loan in accordance with the terms of the loan agreement, including meeting any covenants and requirements in the loan agreement.
7. Last fiscal year's audited annual statement.
8. Are other entities substantially benefiting (greater than 5%) from the project?
 Yes No
9. Submit copies of any service agreement with any substantial beneficiary.
 Attached N/A

EITHER

- B. OM&R Revenue (assuming that an Agency approved revenue system is not in existence)
1. Submission of a detailed Operation, Maintenance and Replacement (OM&R) budget.
 2. Calculations to demonstrate how the rates, if applicable, are calculated. The rates should be expressed in cost per unit of usage (i.e., 1,000 gallons, 100 cubic feet, as appropriate).
 3. Proposed rate ordinances, if applicable.

OR

- C. Supplemental Review (assuming that an Agency approved revenue system is in existence)
1. Submit a copy of the ordinances originally approved.
 2. Submit any amendments made to the ordinances since their approval.

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- 3. Is the OM&R Revenue System generating sufficient revenue to recover the Operation, Maintenance and Replacement Costs? Yes No
If answered No, what corrective action is being taken?
- 4. Is the water rate ordinance, if applicable, being enforced? Yes No
If answered No, please explain.
- 5. Is an annual review of the revenue source being performed?
 Yes No
If answered No, please explain.
- 6. Will the project result in substantial changes to the costs for Operation, Maintenance and Replacement? Yes No
- 7. If #6 is answered yes, please submit a proposed budget for the first year OM&R costs and a review of the revenue source(s), along with appropriate revisions to the rate ordinance, if applicable.

I hereby certify that the above information is, to the best of my knowledge, true and accurate.

(Authorized Representative)	(Date)
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(Clerk)	(Date)
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DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Special Eligibility Groups
- 2) Code Citation: 89 Ill. Adm. Code 118
- 3) Section Number: 118.600 Adopted Action:
New Section
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Effective Date of Amendments: November 2, 2009
- 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 amendment, including any materials incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 17, 2009; 33 Ill. Reg. 10199
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences Between Proposal and Final Version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were required.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? Yes
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Amendment: This rulemaking implements provisions of Public Act 96-20 that continue eligibility for persons currently enrolled in FamilyCare and whose income exceeds 185% of the federal poverty level (FPL) but is not more than 400% FPL. It conforms to the terms of the settlement proposed in *Caro v. Blagojevich*.
- 16) Information and questions regarding this adopted amendment shall be directed to:

Jeanette Badrov

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

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

217/782-1233

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 118

SPECIAL ELIGIBILITY GROUPS

SUBPART A: DISABLED ADULT CHILDREN

Section
118.100 Disabled Adult Children

SUBPART B: PERSONS WITH ACQUIRED IMMUNODEFICIENCY
SYNDROME (AIDS) OR AIDS RELATED COMPLEXES (ARC)

Section
118.150 Continuation of Health Insurance Coverage
118.200 Drugs to Prolong the Lives of Persons With Acquired Immunodeficiency
Syndrome (AIDS) or AIDS Related Complexes (ARC)

SUBPART C: WIDOWS AND WIDOWERS

Section
118.300 Widows and Widowers

SUBPART D: MISCELLANEOUS PROGRAM PROVISIONS

Section
118.400 Incorporation by Reference

SUBPART E: CERTAIN NON-CITIZEN CHILDREN

Section
118.500 Medical Services for Certain Non-Citizen Children

SUBPART F: FAMILYCARE ELIGIBILITY

Section
118.600 Limited FamilyCare Expansion

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

AUTHORITY: Implementing Articles III, IV, VI and Section 5-18 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI, 5-18 and 12-13].

SOURCE: Emergency rule adopted at 12 Ill. Reg. 3037, effective January 15, 1988, for a maximum of 150 days; adopted at 12 Ill. Reg. 6301, effective March 18, 1988; amended at 12 Ill. Reg. 8068, effective April 26, 1988; amended at 13 Ill. Reg. 3950, effective March 10, 1989; amended at 14 Ill. Reg. 10442, effective June 20, 1990; emergency amendment at 15 Ill. Reg. 8708, effective June 1, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 11607, effective July 15, 1992; emergency amendment at 17 Ill. Reg. 11217, effective July 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 19956, effective November 12, 1993; amended at 19 Ill. Reg. 7959, effective June 5, 1995; emergency amendment at 22 Ill. Reg. 15724, effective August 12, 1998, for a maximum of 150 days; amended at 23 Ill. Reg. 562, effective December 24, 1998; emergency amendment at 30 Ill. Reg. 10129, effective May 17, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 16966, effective October 13, 2006; emergency amendment at 33 Ill. Reg. 10780, effective June 30, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 15702, effective November 2, 2009.

SUBPART F: FAMILYCARE ELIGIBILITYSection 118.600 Limited FamilyCare Expansion

- a) Caretaker relatives who were enrolled in FamilyCare as of June 30, 2009, as caretaker relatives (see 89 Ill. Adm. Code 120.390), qualify for medical assistance as long as they maintain continuous enrollment, and their countable income is above 185 percent and at or below 400 percent of the Federal Poverty Income Guidelines, as published annually in the Federal Register, for the appropriate family size. All other requirements applicable to caretaker relatives eligible under 89 Ill. Adm. Code 120.34 must be met.
- b) If a caretaker relative becomes otherwise eligible for medical assistance under 89 Ill. Adm. Code 120, the provisions of this Section shall no longer apply, and nothing in this Section shall preclude a caretaker relative from otherwise qualifying for medical assistance.
- c) Caretaker relatives qualifying under subsection (a) will be covered as follows:
 - 1) If monthly countable income is above 185 percent and at or below 200 percent of the Federal Poverty Level (FPL) for the number of persons in

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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- the family, an eligible caretaker relative will be covered under FamilyCare Premium Level 1.
- 2) If monthly countable income is above 200 percent and at or below 300 percent of the FPL for the number of persons in the family, an eligible caretaker relative will be covered under FamilyCare Premium Level 2.
 - 3) If monthly countable income is above 300 percent and at or below 400 percent of the FPL for the number of persons in the family, an eligible caretaker relative will be covered under FamilyCare Premium Level 3.
 - 4) Premium amounts will be adjusted to reflect adding or removing an eligible caretaker relative from the case and changes in countable income.
- d) Caretaker relatives shall pay premiums as follows:
- 1) Caretaker relatives enrolled in FamilyCare Premium Level 1 who are not in families with American Indians or Alaska Natives shall pay premiums as set forth in 89 Ill. Adm. Code 120.34(c).
 - 2) Caretaker relatives enrolled in FamilyCare Premium Level 2 shall pay premiums of \$80 per person per month.
 - 3) Caretaker relatives enrolled in FamilyCare Premium Level 3 shall pay premiums of \$140 per person per month.
- e) Caretaker relatives enrolled under this Section may receive coverage, and pay the same co-payments, for those medical services available to caretaker relatives eligible under 89 Ill. Adm. Code 120.34.
- f) Caretaker relatives enrolled under this Section have appeal rights, as set forth at 89 Ill. Adm. Code 102.80. The provisions of Subpart A of the Department's administrative rules at 89 Ill. Adm. Code 104, Practice in Administrative Hearings, shall govern any appeals under this Subpart F.

(Source: Added at 33 Ill. Reg. 15702, effective November 2, 2009)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Medical Assistance Programs
- 2) Code Citation: 89 Ill. Adm. Code 120
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
120.32	Amendment
120.34	New Section
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13], Public Act 95-1055 and Public Act 96-0020
- 5) Effective Date of Amendments: November 2, 2009
- 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 amendments, including any materials incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 17, 2009; 33 Ill. Reg. 10201
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Differences between Proposal and Final Version: In Section 120.34(e), the language was changed to read as follows: "Caretaker relatives enrolled in FamilyCare Premium Level 1 must pay premiums based upon the total number of adults in the family enrolled in FamilyCare Premium Level 1 and children in the family enrolled under 89 Ill. Adm. Code 125.240(c)(2).".
- 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 these amendments replace any emergency amendments currently in effect? Yes
- 14) Are there any other amendments pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
120.310	Amendment	April 24, 2009; 33 Ill. Reg. 5994

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

120.374 Amendment June 26, 2009: 33 Ill. Reg. 8808

- 15) Summary and Purpose of Amendments: This rulemaking addresses eligibility for FamilyCare up to and including 185% of the federal poverty level (FPL) based on State law. It conforms to the court approved settlement agreement in *Caro v. Blagojevich*, as well as Public Act 95-1055, Public Act 96-20 and federal Medicaid law.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Jeanette Badrov
General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue E., 3rd Floor
Springfield IL 62763-0002

217/782-1233

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 120

MEDICAL ASSISTANCE PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section

120.1 Incorporation by Reference

SUBPART B: ASSISTANCE STANDARDS

Section

120.10 Eligibility For Medical Assistance
 120.11 MANG(P) Eligibility
 120.12 Healthy Start – Medicaid Presumptive Eligibility Program For Pregnant Women
 120.14 Presumptive Eligibility for Children
 120.20 MANG(AABD) Income Standard
 120.30 MANG(C) Income Standard
 120.31 MANG(P) Income Standard
 120.32 ~~FamilyCare AssistKidCare Parent Coverage Waiver Eligibility and Income Standard~~
120.34 FamilyCare Share and FamilyCare Premium Level 1
 120.40 Exceptions To Use Of MANG Income Standard
 120.50 AMI Income Standard (Repealed)

SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section

120.60 Cases Other Than Long Term Care, Pregnant Women and Certain Children
 120.61 Cases in Intermediate Care, Skilled Nursing Care and DMHDD –
 MANG(AABD) and All Other Licensed Medical Facilities
 120.62 Department of Mental Health and Developmental Disabilities (DMHDD)
 Approved Home and Community Based Residential Settings Under 89 Ill. Adm.
 Code 140.643
 120.63 Department of Mental Health and Developmental Disabilities (DMHDD)
 Approved Home and Community Based Residential Settings

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- 120.64 MANG(P) Cases
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120.72 Eligibility for Medicare Cost Sharing as a Qualified Medicare Beneficiary (QMB)
120.73 Eligibility for Medicaid Payment of Medicare Part B Premiums as a Specified
Low-Income Medicare Beneficiary (SLIB)
120.74 Qualified Medicare Beneficiary (QMB) Income Standard
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- Section
120.80 Recipient Restriction Program

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- Section
120.90 Migrant Medical Program (Repealed)
120.91 Income Standards (Repealed)

SUBPART G: AID TO THE MEDICALLY INDIGENT

- Section
120.200 Elimination Of Aid To The Medically Indigent
120.208 Client Cooperation (Repealed)
120.210 Citizenship (Repealed)
120.211 Residence (Repealed)
120.212 Age (Repealed)
120.215 Relationship (Repealed)
120.216 Living Arrangement (Repealed)
120.217 Supplemental Payments (Repealed)
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120.224 Foster Care Program (Repealed)

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120.225	Social Security Numbers (Repealed)
120.230	Unearned Income (Repealed)
120.235	Exempt Unearned Income (Repealed)
120.236	Education Benefits (Repealed)
120.240	Unearned Income In-Kind (Repealed)
120.245	Earmarked Income (Repealed)
120.250	Lump Sum Payments and Income Tax Refunds (Repealed)
120.255	Protected Income (Repealed)
120.260	Earned Income (Repealed)
120.261	Budgeting Earned Income (Repealed)
120.262	Exempt Earned Income (Repealed)
120.270	Recognized Employment Expenses (Repealed)
120.271	Income From Work/Study/Training Program (Repealed)
120.272	Earned Income From Self-Employment (Repealed)
120.273	Earned Income From Roomer and Boarder (Repealed)
120.275	Earned Income In-Kind (Repealed)
120.276	Payments from the Illinois Department of Children and Family Services (Repealed)
120.280	Assets (Repealed)
120.281	Exempt Assets (Repealed)
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120.283	Deferral of Consideration of Assets (Repealed)
120.284	Spend-down of Assets (AMI) (Repealed)
120.285	Property Transfers (Repealed)
120.290	Persons Who May Be Included in the Assistance Unit (Repealed)
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120.317	Supplemental Payments
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120.330	Unearned Income
120.332	Budgeting Unearned Income
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120.336	Education Benefits
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120.340	Unearned Income In-Kind
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120.346	Medicaid Qualifying Trusts
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120.355	Protected Income
120.360	Earned Income
120.361	Budgeting Earned Income
120.362	Exempt Earned Income
120.363	Earned Income Disregard – MANG(C)
120.364	Earned Income Exemption
120.366	Exclusion From Earned Income Exemption
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120.373	Earned Income From Roomer and Boarder
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120.390	Persons Who May Be Included In the Assistance Unit
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120.392	Pregnant Women Who Would Not Be Eligible For AFDC/AFDC-MANG If The Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
120.393	Pregnant Women And Children Under Age Eight Years Who Do Not Qualify As Mandatory Categorically Needy Demonstration Project
120.395	Payment Levels for MANG (Repealed)
120.399	Redetermination of Eligibility
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SUBPART I: SPECIAL PROGRAMS

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120.500	Health Benefits for Persons with Breast or Cervical Cancer
120.510	Health Benefits for Workers with Disabilities
120.520	SeniorCare (Repealed)
120.530	Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons Under Age 21
120.540	Illinois Healthy Women Program
120.550	Asylum Applicants and Torture Victims
120.TABLE A	Value of a Life Estate and Remainder Interest
120.TABLE B	Life Expectancy

AUTHORITY: Implementing Articles III, IV, V and VI and authorized by Section 12-13 of the

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Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13].

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; peremptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; peremptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; peremptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; peremptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142,

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effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 6082; amended at 7 Ill. Reg. 8256, effective July 1, 1983; amended at 7 Ill. Reg. 8264, effective July 5, 1983; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 14747; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16108; amended at 8 Ill. Reg. 5253, effective April 9, 1984; amended at 8 Ill. Reg. 6770, effective April 27, 1984; amended at 8 Ill. Reg. 13328, effective July 16, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17897; amended at 8 Ill. Reg. 18903, effective September 26, 1984; preemptory amendment at 8 Ill. Reg. 20706, effective October 3, 1984; amended at 8 Ill. Reg. 25053, effective December 12, 1984; emergency amendment at 9 Ill. Reg. 830, effective January 3, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 4515, effective March 25, 1985; amended at 9 Ill. Reg. 5346, effective April 11, 1985; amended at 9 Ill. Reg. 7153, effective May 6, 1985; amended at 9 Ill. Reg. 11346, effective July 8, 1985; amended at 9 Ill. Reg. 12298, effective July 25, 1985; amended at 9 Ill. Reg. 12823, effective August 9, 1985; amended at 9 Ill. Reg. 15903, effective October 4, 1985; amended at 9 Ill. Reg. 16300, effective October 10, 1985; amended at 9 Ill. Reg. 16906, effective October 18, 1985; amended at 10 Ill. Reg. 1192, effective January 10, 1986; amended at 10 Ill. Reg. 3033, effective January 23, 1986; amended at 10 Ill. Reg. 4907, effective March 7, 1986; amended at 10 Ill. Reg. 6966, effective April 16, 1986; amended at 10 Ill. Reg. 10688, effective June 3, 1986; amended at 10 Ill. Reg. 12672, effective July 14, 1986; amended at 10 Ill. Reg. 15649, effective September 19, 1986; amended at 11 Ill. Reg. 3992, effective February 23, 1987; amended at 11 Ill. Reg. 7652, effective April 15, 1987; amended at 11 Ill. Reg. 8735, effective April 20, 1987; emergency amendment at 11 Ill. Reg. 12458, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 14034, effective August 14, 1987; amended at 11 Ill. Reg. 14763, effective August 26, 1987; amended at 11 Ill. Reg. 20142, effective January 1, 1988; amended at 11 Ill. Reg. 20898, effective December 14, 1987; amended at 12 Ill. Reg. 904, effective January 1, 1988; amended at 12 Ill. Reg. 3516, effective January 22, 1988; amended at 12 Ill. Reg. 6234, effective March 22, 1988; amended at 12 Ill. Reg. 8672, effective May 13, 1988; amended at 12 Ill. Reg. 9132, effective May 20, 1988; amended at 12 Ill. Reg. 11483, effective June 30, 1988; emergency amendment at 12 Ill. Reg. 11632, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 11839, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12835, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 13243, effective July 29, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 17867, effective October 30, 1988; amended at 12 Ill. Reg. 19704, effective November 15, 1988; amended at 12 Ill. Reg. 20188, effective November 23, 1988; amended at 13 Ill. Reg. 116, effective January 1, 1989; amended at 13 Ill. Reg. 2081, effective February 3, 1989; amended at

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13 Ill. Reg. 3908, effective March 10, 1989; emergency amendment at 13 Ill. Reg. 11929, effective June 27, 1989, for a maximum of 150 days; emergency expired November 25, 1989; emergency amendment at 13 Ill. Reg. 12137, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 15404, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16586, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 13 Ill. Reg. 17483, effective October 31, 1989; amended at 13 Ill. Reg. 17838, effective November 8, 1989; amended at 13 Ill. Reg. 18872, effective November 17, 1989; amended at 14 Ill. Reg. 760, effective January 1, 1990; emergency amendment at 14 Ill. Reg. 1494, effective January 2, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 4233, effective March 5, 1990; emergency amendment at 14 Ill. Reg. 5839, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 6372, effective April 16, 1990; amended at 14 Ill. Reg. 7637, effective May 10, 1990; amended at 14 Ill. Reg. 10396, effective June 20, 1990; amended at 14 Ill. Reg. 13227, effective August 6, 1990; amended at 14 Ill. Reg. 14814, effective September 3, 1990; amended at 14 Ill. Reg. 17004, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 348, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5302, effective April 1, 1991; amended at 15 Ill. Reg. 10101, effective June 24, 1991; amended at 15 Ill. Reg. 11973, effective August 12, 1991; amended at 15 Ill. Reg. 12747, effective August 16, 1991; amended at 15 Ill. Reg. 14105, effective September 11, 1991; amended at 15 Ill. Reg. 14240, effective September 23, 1991; amended at 16 Ill. Reg. 139, effective December 24, 1991; amended at 16 Ill. Reg. 1862, effective January 20, 1992; amended at 16 Ill. Reg. 10034, effective June 15, 1992; amended at 16 Ill. Reg. 11582, effective July 15, 1992; amended at 16 Ill. Reg. 17290, effective November 3, 1992; amended at 17 Ill. Reg. 1102, effective January 15, 1993; amended at 17 Ill. Reg. 6827, effective April 21, 1993; amended at 17 Ill. Reg. 10402, effective June 28, 1993; amended at 18 Ill. Reg. 2051, effective January 21, 1994; amended at 18 Ill. Reg. 5934, effective April 1, 1994; amended at 18 Ill. Reg. 8718, effective June 1, 1994; amended at 18 Ill. Reg. 11231, effective July 1, 1994; amended at 19 Ill. Reg. 2905, effective February 27, 1995; emergency amendment at 19 Ill. Reg. 9280, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 11931, effective August 11, 1995; amended at 19 Ill. Reg. 15079, effective October 17, 1995; amended at 20 Ill. Reg. 5068, effective March 20, 1996; amended at 20 Ill. Reg. 15993, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 692, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 7423, effective May 31, 1997; amended at 21 Ill. Reg. 7748, effective June 9, 1997; amended at 21 Ill. Reg. 11555, effective August 1, 1997; amended at 21 Ill. Reg. 13638, effective October 1, 1997; emergency amendment at 22 Ill. Reg. 1576, effective January 5, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 7003, effective April 1, 1998; amended at 22 Ill. Reg. 8503, effective May 1, 1998; amended at 22 Ill. Reg. 16291, effective August 28, 1998; emergency amendment at 22 Ill. Reg. 16640, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19875, effective October 30, 1998; amended at 23 Ill. Reg. 2381, effective January 22, 1999; amended at 23 Ill.

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Reg. 11301, effective August 27, 1999; amended at 24 Ill. Reg. 7361, effective May 1, 2000; emergency amendment at 24 Ill. Reg. 10425, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15075, effective October 1, 2000; amended at 24 Ill. Reg. 18309, effective December 1, 2000; amended at 25 Ill. Reg. 8783, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 10533, effective August 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 16098, effective December 1, 2001; amended at 26 Ill. Reg. 409, effective December 28, 2001; emergency amendment at 26 Ill. Reg. 8583, effective June 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 9843, effective June 26, 2002; emergency amendment at 26 Ill. Reg. 11029, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 15051, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16288, effective October 25, 2002; amended at 27 Ill. Reg. 4708, effective February 25, 2003; emergency amendment at 27 Ill. Reg. 10793, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18609, effective November 26, 2003; amended at 28 Ill. Reg. 4701, effective March 3, 2004; amended at 28 Ill. Reg. 6139, effective April 1, 2004; emergency amendment at 28 Ill. Reg. 6610, effective April 19, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 7152, effective May 3, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 11149, effective August 1, 2004; emergency amendment at 28 Ill. Reg. 12921, effective September 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13621, effective September 28, 2004; amended at 28 Ill. Reg. 13760, effective October 1, 2004; amended at 28 Ill. Reg. 14541, effective November 1, 2004; amended at 29 Ill. Reg. 820, effective January 1, 2005; amended at 29 Ill. Reg. 10195, effective June 30, 2005; amended at 29 Ill. Reg. 14939, effective September 30, 2005; emergency amendment at 30 Ill. Reg. 521, effective January 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 10314, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 15029, effective September 1, 2006, for a maximum of 150 days; amended at 31 Ill. Reg. 2629, effective January 28, 2007; emergency amendment at 31 Ill. Reg. 7323, effective May 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11667, effective August 1, 2007; amended at 31 Ill. Reg. 12756, effective August 27, 2007; emergency amendment at 31 Ill. Reg. 15854, effective November 7, 2007, for a maximum of 150 days; emergency rule suspended at 31 Ill. Reg. 16060, effective November 13, 2007; emergency rule repealed, effective May 10, 2008; preemptory amendment at 32 Ill. Reg. 7212, effective April 21, 2008; preemptory amendment suspended at 32 Ill. Reg. 8450, effective May 21, 2008; preemptory amendment repealed under Section 5-125 of the Illinois Administrative Procedure Act, effective November 16, 2008; amended at 32 Ill. Reg. 17428, effective November 1, 2008; preemptory amendment at 32 Ill. Reg. 18889, effective November 18, 2008; preemptory amendment suspended at 32 Ill. Reg. 18906, effective November 19, 2008; suspension withdrawn by the Joint Committee on Administrative Rules at 33 Ill. Reg. 6551, effective April 28, 2009; preemptory amendment repealed by emergency rulemaking at 33 Ill. Reg. 6712, effective April 28, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 1681, effective February 1, 2009; amended at 33 Ill. Reg. 2289, effective March 1,

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2009; emergency amendment at 33 Ill. Reg. 5802, effective April 2, 2009, for a maximum of 150 days; emergency expired August 29, 2009; emergency amendment at 33 Ill. Reg. 10785, effective June 30, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 12703, effective September 7, 2009; amended at 33 Ill. Reg. 15707, effective November 2, 2009.

SUBPART B: ASSISTANCE STANDARDS

Section 120.32 FamilyCare AssistKidCare Parent Coverage Waiver Eligibility and Income Standard

- a) A caretaker relative (see Section 120.390) who is 19 years of age or older qualifies for medical assistance when countable income is at or below the appropriate income standard ~~and all MANG(C) eligibility requirements in this Part, with the exception of Sections 120.320 through 120.323, are met.~~
- b) The appropriate income standard is 133 per cent of the Federal Poverty Income Guidelines, as published annually in the Federal Register, for the appropriate family size.
- e) ~~If income is greater than this amount, it is compared to the MANG(C) Income Standard in Section 120.30 to determine the spenddown amount.~~

(Source: Amended at 33 Ill. Reg. 15707, effective November 2, 2009)

Section 120.34 FamilyCare Share and FamilyCare Premium Level 1

- a) A caretaker relative (see Section 120.390) who is 19 years of age or older qualifies for medical assistance when countable income is at or below the appropriate income standard.
- b) The caretaker relative may not be otherwise eligible for medical assistance, including Section 120.32.
- c) The appropriate income standard is 185 percent of the Federal Poverty Income Level Guidelines, as published annually in the Federal Register, for the appropriate family size. If income is greater than this amount, the Department shall compare it to the MANG(C) Income Standard in Section 120.30 to determine the spenddown amount.

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- d) Caretaker relatives will be enrolled into either FamilyCare Share or FamilyCare Premium Level 1 as follows:
- 1) If monthly countable income is above 133 percent and at or below 150 percent of the Federal Poverty Level (FPL) for the number of persons in the family, coverage under FamilyCare Share shall be effective as established in 89 Ill. Adm. Code 110.34.
 - 2) If monthly countable income is above 150 percent and at or below 185 percent of the FPL for the number of persons in the family, an eligible caretaker relative shall be enrolled prospectively in FamilyCare Premium Level I and premiums shall be payable as established in subsection (f)(1) of this Section. Coverage for months prior to the first prospective month of coverage as established in 89 Ill. Adm. Code 110.34 shall be dependent on payment of premiums for those months as set forth in subsection (f)(2) of this Section.
 - 3) The first month of prospective eligibility for caretaker relatives whose eligibility for FamilyCare Premium Level 1 is determined by the 15th of the month will be the following month. The first month of prospective eligibility for caretaker relatives whose eligibility for FamilyCare Premium Level 1 is determined after the 15th day of the month will be the second month following that determination.
- e) Caretaker relatives enrolled in FamilyCare Premium Level 1 must pay monthly premiums based upon based upon the total number of adults in the family enrolled in FamilyCare Premium Level 1 and children in the family enrolled under 89 Ill. Adm. Code 125.240(c)(2).
- 1) The premium amounts are \$15 for one person, \$25 for two persons, \$30 for three persons, \$35 for four persons, and \$40 for five or more persons.
 - 2) Premiums are billed by and payable to the Department, or its authorized agent, on a monthly basis.
 - 3) The premium due date will be the last day of the calendar month preceding the month of coverage.

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- 4) No premiums will be charged to families with an enrolled person who is an American Indian or Alaska Native.

- f) FamilyCare Premium Level 1 premiums shall be due as follows:
 - 1) Premiums owed for the first prospective month of coverage and each subsequent month shall be due by the last day of the month preceding the month of coverage. Participants shall have a minimum grace period through the end of the month of coverage to pay the premium. Failure to pay the full monthly premium by the last day of the grace period will result in termination of coverage.
 - 2) Coverage for the months of eligibility prior to the first prospective month of eligibility will not be authorized until the premium payment is received.
 - 3) Partial premium payments will not be refunded.

- g) An eligible caretaker relative becomes ineligible due to:
 - 1) For those with countable income above 150 percent FPL, not paying the required premiums.
 - 2) For those with countable income above 150 percent FPL, not repaying a rebate overpayment under 89 Ill. Adm. Code 125 to the Department, according to terms established by the Department, which may include recoupment out of future rebate payments or a payment plan.

- h) Following termination of coverage under FamilyCare, the following action is required before the caretaker relative can be re-enrolled:
 - 1) For caretaker relatives with countable income above 150 percent of the FPL, there must be full payment of premiums under Section 120.510 of FamilyCare, AllKids Premium Levels 1-8 under 89 Ill. Adm. Code 123 or 89 Ill. Adm. Code 125, Health Benefits for Workers with Disabilities under Section 120.510 of this Part, or Veterans Care under 89 Ill. Adm. Code 128, for periods in which a premium was owed, including premiums owed when the caretaker relative was, for purposes of this Part, a member of another family;

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- 2) For persons with countable income above 150 percent of the FPL, any overpayment of rebates must be repaid to the Department. A rebate overpayment shall be considered repaid if the Department can recoup the overpayment out of future rebate payments; and
 - 3) The first month's premium must be paid if the caretaker relative is eligible for FamilyCare Premium Level 1 and there was an unpaid premium on the date the caretaker relative's previous eligibility was cancelled.
- i) An application will be denied if any of the eligible caretaker relatives with income above 150 percent of the FPL in the family was responsible as a caretaker relative, or eligible as a caretaker relative during a period for which a premium under FamilyCare was due to the Department, and the premium remains unpaid at the time of application. That application shall be denied, regardless of whether the caretaker relative for whom the premium remains unpaid is included in the application.

(Source: Added at 33 Ill. Reg. 15707, effective November 2, 2009)

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NOTICE OF ADOPTED REPEALER

- 1) Heading of the Part: Worker's Compensation
- 2) Code Citation: 89 Ill. Adm. Code 645
- 3) Section Number: 645.10 Adopted Action:
Repealed
- 4) Statutory Authority: Implementing Section 8104 of the Federal Employees' Compensation Act, as amended (5 U.S.C. 8104 (1982)) and implementing and authorized by Section 3(b) and (k) of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3(b) and (k)]
- 5) Effective date of Repealer: October 30, 2009
- 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 repealer, 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: 33 Ill. Reg. 4556; March 27, 2009
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: No changes were made.
- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were necessary.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and purpose of rulemaking: DHS is repealing this Part. Injured workers referred to DHS by the Department of Labor, Office of Workers' Compensation Programs (OWCP) are provided the same vocational rehabilitation services as all other customers, so this Part is unnecessary.

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NOTICE OF ADOPTED REPEALER

- 16) Information and questions regarding this adopted amendment 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, Illinois 62762

217/785-9772

- 17) Does this amendment require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code? No

DEPARTMENT OF NATURAL RESOURCES

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- 1) Heading of the Part: Illinois Prescribed Burning Act
- 2) Code Citation: 17 Ill. Adm. Code 1565
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
1565.5	New Section
1565.10	New Section
1565.20	New Section
1565.30	New Section
1565.40	New Section
1565.50	New Section
1565.60	New Section
1565.70	New Section
1565.EXHIBIT A	New Section
- 4) Statutory Authority: Implementing and authorized by the Illinois Prescribed Burning Act [525 ILCS 37]
- 5) Effective Date of Rules: November 2, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including all material incorporated by reference, is on file in the Department of Natural Resources' principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: June 19, 2009; 33 Ill. Reg. 8054
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: Minor changes were made to correct punctuation, spelling and grammatical errors. More significant changes are listed below:

A new Section "1565.5" was added:

Section 1565.5 Purpose

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED RULES

The purpose of this Part is to provide procedures for prescribed burning, including but not limited to, obtaining a prescribed burn manager certification, revocation of prescribed burn manager certification and preparing a prescribed burn prescription pursuant to the requirements of the Illinois Prescribed Burning Act, 525 ILCS 37/10 et seq.

In Section 1565.10, the following new definitions were added:

"Burn Prescription" means a written plan for conducting a prescribed burn.

"NIIMS" means the National Inter-agency Incident Management System administered by the Federal Emergency Management Agency (FEMA).

In Section 1565.20(d), "Certified Prescribed Burn Manager" was changed to read "prescribed burn manager" and "July 1, 2009" was changed to "November 1, 2009".

Text in Section 1565.20(f) was changed to read as follows:

Persons who have received the certification as a Prescribed Fire Burn Boss Type 1 or Type 2, known as RXB1 or RXB2 respectively, under the NIIMS Wildland Fire Qualification System, can receive an Illinois Certified Prescribed Burn Manager Certificate by submitting an Application, proof of the RXB1 or RXB2 certification and the \$50 fee to: Illinois Department of Natural Resources, Attention: Prescribed Burn Manager Certification, One Natural Resources Way, Springfield IL 62702-1271.

A new sentence was added to the end of Section 1565.40(c):

This may include, but is not limited to, an open burning permit from the Illinois EPA pursuant to 35 Ill. Adm. Code 237.201.

A new subsection was added to Section 1565.50:

- f) Where applicable, persons shall follow guidance from the Illinois EPA concerning Illinois' Smoke Management Plan (SMP) including avoiding prescribed burns on "Air Pollution Action Days" as defined in the SMP or in consultation with the Illinois EPA.

DEPARTMENT OF NATURAL RESOURCES

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- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were necessary
- 13) Will this rulemaking replace an emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: P.A. 95-108, effective, August 13, 2007, established the Illinois Prescribed Burning Act. This rule contains regulations pertaining to the implementation of a program for Certified Prescribed Burn Managers, lays out standards for burn prescriptions and provides provisions for conducting prescribed burns.
- 16) Information and questions regarding these adopted rules shall be directed to:

Stanley Yonkausk, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/782-1809

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED RULES

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER d: FORESTRYPART 1565
ILLINOIS PRESCRIBED BURNING ACT

Section

1565.5	Purpose
1565.10	Definitions
1565.20	Certified Prescribed Burn Manager
1565.30	Burn Prescriptions
1565.40	Notifications and Permits
1565.50	Conducting Prescribed Burns
1565.60	Records and Reporting
1565.70	Administration of Act
1565.EXHIBIT A	Certified Prescribed Burn Manager Application

AUTHORITY: Implementing and authorized by the Illinois Prescribed Burning Act [525 ILCS 37].

SOURCE: Adopted at 33 Ill. Reg. 15724, effective November 2, 2009.

Section 1565.5 Purpose

The purpose of this Part is to provide procedures for prescribed burning, including, but not limited to, obtaining a prescribed burn manager certification, revocation of prescribed burn manager certification and preparing a prescribed burn prescription pursuant to the requirements of the Illinois Prescribed Burning Act [525 ILCS 37].

Section 1565.10 Definitions

"Act" means the Illinois Prescribed Burning Act [525 ILCS 37].

"Apprentice Prescribed Burn Manager" is a person at a prescribed burn that has successfully completed the training classes described under Section 1565.20(b)(1), participated in prescribed burns as described in Section 1565.20(b)(2), has been accepted by a certified prescribed burn manager as the apprentice prescribed burn manager for the prescribed burn, and is assuming the

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functions of a certified prescribed burn manager during the prescribed burn under the direct supervision of a certified prescribed burn manager as a training requirement pursuant to Section 1565.20(b)(3).

"Burn Personnel" means any paid person or volunteer involved in conducting prescribed burning under the Act.

"Burn Prescription" means a written plan for conducting a prescribed burn.

"Central Dispatching Agency" is an agency that provides dispatching services for a number of emergency agencies (fire, law enforcement or ambulance) in a defined geographic area.

"Certificate" is a written certificate and number issued by the Department identifying a person as a certified prescribed burn manager and is considered a license subject to revocation proceedings described in Subpart C of 17 Ill. Adm. Code 2530 (Revocation Procedures for Conservation Offenses).

"Certified Prescribed Burn Manager" is an individual who conducts the activities described in Section 1565.20(a), and successfully completes an approved training program and receives proper certification as described in Section 1565.20(b) through (f).

"Department" means the Illinois Department of Natural Resources.

"Director" means the Director of the Department.

"Escaped Fire" means any fire that goes beyond the area described in the burn prescription and requires outside resources to contain or that burns onto adjoining landowner's land not included in the burn prescription.

"Incident Commander", "Incident Command Authority" and "Unified Command" are terms defined by the National Inter-agency Incident Management System (NIIMS) and are used in this Part to describe the person or persons directly responsible for control and suppression of a prescribed burn or an escaped fire resulting from a prescribed burn.

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"Landowner" includes the owner, owning agency or other legal entity owning a parcel of land where a prescribed burn is executed or is proposed to be executed, their designated agent or land manager.

"NIIMS" means the National Inter-agency Incident Management System administered by the Federal Emergency Management Agency (FEMA).

"Prescribed Burn Manager Certification Board" is a Board of five representatives whose job responsibilities include natural areas stewardship, wildlife habitat management or forest management and who have experience with prescribed burn management or incident command. The Board shall be made up of three representatives designated by the Director, one representative designated by the Illinois Nature Preserves Commission and one representative designated by the Office of the State Fire Marshal.

"Prescribed Burn Report" is the written report and evaluation of a prescribed burn, including the information required in Section 1565.60(c) that is prepared and signed by the certified prescribed burn manager after a prescribed burn is completed.

"Prescribed Burning" is the planned application of fire to naturally occurring vegetative fuels, under specified environmental conditions and following appropriate precautionary measures, that causes the fire to be confined to a predetermined area and accomplishes the planned land management objectives.

Section 1565.20 Certified Prescribed Burn Manager

- a) A certified prescribed burn manager performs the following activities:
- 1) writes and/or approves burn prescriptions as described in Section 1565.30;
 - 2) serves as the direct supervisor of the burn personnel at the scene of a prescribed burn and is responsible for implementing a burn prescription as described in Section 1565.40; and
 - 3) supervises and trains an apprentice prescribed burn manager as described in Section 1565.20(c).

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- b) To become a certified prescribed burn manager, a person must complete the following requirements and have a valid Illinois Certified Prescribed Burn Manager Certificate issued by the Department pursuant to Section 1565.70.
- 1) Successfully complete:
 - A) the following National Wildfire Coordinating Group Wildland Fire Training Courses or equivalents:
 - i) Basic Incident Command System (I-100);
 - ii) Fire Fighter Training (S-130); and
 - iii) Wildland Fire Behavior (S-190); or
 - B) a specialized Illinois Prescribed Burning Manager Course that incorporates pertinent information in the courses listed in subsection (b)(1)(A), along with information on prescribed burning in Illinois that has been approved by the Prescribed Burn Manager Certification Board;
 - 2) Participate in five prescribed burns that will be documented on a Certified Prescribed Burn Manager Application;
 - 3) Successfully complete two prescribed burns as an apprentice prescribed burn manager under the supervision of a certified prescribed burn manager;
 - 4) Submit the following to the Illinois Department of Natural Resources, Attention: Prescribed Burn Manager Certification, One Natural Resources Way, Springfield IL 62702-1271:
 - A) A Certified Prescribed Burn Manager Application (the Application);
 - B) A \$50 fee (State of Illinois employees are exempt from the fee); and

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- C) Copies of all course certificates and relevant prescribed burn prescriptions and prescribed burn report forms or an affidavit described in Section 1565.20(d) for the burns required in Section 1565.20(b)(3) documenting the experience and apprenticeship.
- c) To become an apprentice, a person must apply to DNR in writing and be accepted by a certified prescribed burn manager who will agree to supervise the training in conducting the burn. An apprentice prescribed burn manager shall assume the functions of a certified prescribed burn manager during a burn under the direct supervision of a certified prescribed burn manager. An apprentice shall sign the prescribed burn report as the "apprentice prescribed burn manager" and note his or her experience on the Application. The certified prescribed burn manager supervising the apprentice shall also provide an evaluation of the performance of the apprentice and certify the successful completion of the burn by the apprentice on the prescribed burn report. The signatures on the prescribed burn report shall serve as documentation of the number of times an apprentice serves as an apprentice prescribed burn manager.
- d) Prior to December 31, 2010, persons who have submitted an affidavit along with their Application attesting to their participation in at least seven burns, including at least five at which they have served as the prescribed burn manager prior to November 1, 2009, shall be considered to have completed the apprenticeship and experience requirements.
- e) Persons who hold certifications from other states whose training meets or exceeds the requirements of this Part can receive an Illinois Certified Prescribed Burn Manager Certificate by submitting an Application, proof of certification in another state and the \$50 fee to: Illinois Department of Natural Resources, Attention: Prescribed Burn Manager Certification, One Natural Resources Way, Springfield IL 62702-1271.
- f) Persons who have received the certification as a Prescribed Fire Burn Boss Type 1 or Type 2, known as RXB1 or RXB2 respectively, under the NIIMS Wildland Fire Qualification System, can receive an Illinois Certified Prescribed Burn Manager Certificate by submitting an Application, proof of the RXB1 or RXB2 certification and the \$50 fee to: Illinois Department of Natural Resources, Attention: Prescribed Burn Manager Certification, One Natural Resources Way, Springfield IL 62702-1271.

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Section 1565.30 Burn Prescriptions

The burn prescription shall include the following information:

- a) a site name or other designation for the prescribed burn area;
- b) location of the prescribed burn, including county, civil township, township range and section, and a map showing the location of the burn, firebreaks, hazards, staging area and other features specific to the execution of the burn;
- c) the name, address and phone number of the owner or manager of the land where the burn is to take place;
- d) the time frame when the prescribed burn is to take place;
- e) the purpose and objectives for the prescribed burn;
- f) a description of the area to be burned, including, but not necessarily limited to, size in acres, fuel type, topography, known presence of endangered or threatened species, and presence of peat or high organic soils and mitigation measures to prevent or control ignition of those soils;
- g) the range of acceptable pre-ignition weather factors, including, but not limited to, air temperature, relative humidity, wind direction and wind velocity;
- h) the minimum number of burn personnel required;
- i) an outline of smoke sensitive areas and smoke mitigation methods;
- j) the equipment required, other than standard hand tools;
- k) a communication plan and equipment for the prescribed burn;
- l) a method of fire line construction;
- m) copies of required permits;
- n) plans for making notifications as described in Section 1565.40;

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- o) contingency plans for escaped fires, including water sources, rendezvous location for fire departments and paramedics, other fire fighting resources available, vulnerable infrastructure, escape routes and safety zones;
- p) emergency contact information, including, at a minimum, the closest intersection, fire, paramedic and police emergency and non-emergency dispatch contact information;
- q) name, certificate number and contact information for the certified prescribed burn manager approving the burn prescription;
- r) a signature of a certified prescribed burn manager approving the burn prescription and the date of the signature; and
- s) the signature of a landowner approving the use of prescribed burning on the property. Approvals of prescribed burning would also be considered valid if prescribed burning is included on another land management plan or other document approved in writing by the landowner.

Section 1565.40 Notifications and Permits

- a) The certified prescribed burn manager shall make a reasonable attempt to notify all adjoining landowners and occupants of the approximate time and date of the burn, using a method that is reasonably assured to provide notice before the planned prescribed burn. The method of notification to adjacent landowners shall be documented on the prescribed burn report. Any one of the following are considered reasonable attempts of notification and shall be considered in compliance with Section 15(5) of the Act and this Section; however, this list should not be construed to be the only acceptable ways to make this notification:
 - 1) posting the property to be burned;
 - 2) contacting or attempting to contact the adjoining landowner by phone, in person, delivery of a brochure or written notice to a residence or via mail or email; or
 - 3) publication of the intent and range of dates and approximate time in a newspaper published in the area of the burn.

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- b) The certified prescribed burn manager shall notify, on the day of the burn, the local fire departments, county dispatcher, 911 dispatcher or other emergency dispatcher who has jurisdiction over the area including the prescribed burn. If a local agency is dispatched through a central dispatching agency, the prescribed burn manager will be considered in compliance with Section 15(4) of the Act and this Section if he or she has notified the central dispatching agency.
- c) The certified prescribed burn manager shall insure that all local, State and federal permits that are needed are obtained before a prescribed burn is conducted. This may include, but is not limited to, an open burning permit from the Illinois EPA pursuant to 35 Ill. Adm. Code 237.201.

Section 1565.50 Conducting Prescribed Burns

- a) In order to ensure the safety of personnel and the public, a certified prescribed burn manager shall be present at the scene of all prescribed burns except where the landowner is conducting prescribed burning on his or her own lands or on the lands of another with the landowner's permission as authorized by Illinois law.
- b) The certified prescribed burn manager shall obtain guidance from the National Weather Service (NWS) in identifying Fire Weather Watch and Red Flag Warning conditions available through the regional NWS offices of the National Oceanic and Atmospheric Agency. The determination by NWS of Fire Weather Watch and Red Flag Warning conditions for a designated area will require that the certified prescribed burn manager and other personnel exercise elevated caution during those conditions.
- c) The certified prescribed burn manager is responsible for reviewing and implementing the burn prescription, reviewing it with the burn personnel and the timely completion of the prescribed burn report. The certified prescribed burn manager shall discuss emergency procedures and plans with burn personnel and modify procedures and contingency plans if necessary.
- d) In the case of an escaped fire, the certified prescribed burn manager or his or her designee shall assess burn personnel status, contact outside agencies if necessary, and share information (e.g., aerial photos, burn prescription, resources available and access routes) with other agencies at the scene. A certified prescribed burn manager shall serve as Incident Commander and remain in command until command is transferred to another qualified person. The certified prescribed burn

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manager may serve in a Unified Command or relinquish Incident Command authority to other firefighting authorities at his or her discretion.

- e) When a person is conducting prescribed burning on his or her own lands or on lands of another with the landowner's permission, the person shall have a written burn prescription, make the notifications described in Section 1565.40, and conduct the burn as described in Section 1565.50(b) and (c).
- f) Where applicable, persons shall follow guidance from the Illinois EPA concerning Illinois' Smoke Management Plan (SMP), including avoiding prescribed burns on "Air Pollution Action Days" as defined in the SMP or in consultation with the Illinois EPA.

Section 1565.60 Records and Reporting

- a) After each prescribed burn, a prescribed burn report shall be completed by the certified prescribed burn manager for the burn, or his or her designee, and provided to the landowner upon request and to any apprentice. The certified prescribed burn manager or his or her employer shall maintain a file of all prescribed burn prescriptions and prescribed burn reports for completed burns for a period of not less than five years after the completion of a burn. This file shall be made available to the Department upon request.
- b) A prescribed burn report shall include:
 - 1) a copy of the prescribed burn prescription;
 - 2) a map showing the area actually burned, control lines, wind direction, fire mosaic and other features specific to the execution of the burn;
 - 3) the date and time the prescribed burn took place, including ignition time, time of significant events and final mop up time;
 - 4) an evaluation of the burn, including a discussion of meeting burn objectives, changes or deviations from the prescribed burn prescription, injuries or damage to property if any, any emergency actions taken and other significant events;

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- 5) an evaluation of the performance of any apprentice prescribed burn manager that served on the burn;
 - 6) the pre-ignition weather factors and any other weather observations collected to verify conditions were within the burn prescription;
 - 7) the number of burn personnel involved;
 - 8) documentation of all notifications and permits obtained;
 - 9) information on any fire, paramedic and police emergency agencies that were requested and arrived on scene;
 - 10) name, certificate number and contact information for the certified prescribed burn manager; and
 - 11) a dated signature of the certified prescribed burn manager and any apprentice prescribed burn manager serving at the burn.
- c) If there are any injuries that require professional medical attention or damage to public or private property in excess of \$500, or if the prescribed burn becomes an escaped fire, the certified prescribed burn manager shall supply a copy of the prescribed burn report to the landowner, responding emergency agencies and, within 45 days after completion of the prescribed fire, to the Illinois Department of Natural Resources, Attention: Prescribed Fire Reports, One Natural Resources Way, Springfield IL 62702-1271.

Section 1565.70 Administration of Act

- a) Upon receipt of a completed Certified Prescribed Burn Manager Application, the required documentation of coursework, apprenticeship and experience described in Section 1565.20 and a fee of \$50, the Department shall issue an Illinois Certified Prescribed Burn Manager Certificate within 45 days or notify the applicant in writing of the reason the certificate was denied. Applicants who have been denied a certificate may re-apply after correcting any deficiencies in their original Application. Persons employed by the State of Illinois shall be exempt from the \$50 fee.
- b) Denial of a certificate may be appealed pursuant to 17 Ill. Adm. Code 2530.

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- c) Any fees collected under this Part shall be deposited into the Forestry Development Fund.
- d) An Illinois Certified Prescribed Burn Manager Certificate may be revoked pursuant to the procedures described in 17 Ill. Adm. Code 2530 for serious and or continuing violations of the Act or this Part, falsification or misrepresentation on the Certified Prescribed Burn Manager Application or supporting documents, or a pattern of negligence in performing the duties of a certified prescribed burn manager.
- e) An organization or individual may petition the Department to approve coursework and training programs as an Illinois Prescribed Burn Manager Course by submitting to the Illinois Prescribed Burn Manager Certification Board a course syllabus, length of course and trainer qualifications demonstrating that the course meets the standards described in Section 1565.20(a)(1). The Board may require the submitter to provide additional information necessary to evaluate the program. The Board shall make a recommendation to the Director to approve or not approve the submitted program as an Illinois Prescribed Burn Manager Course.
- f) Periodically, but not less than annually, the Illinois Prescribed Burn Manager Certification Board shall meet to review prescribed burn reports submitted under this Part, review requirements of prescribed burn certification in other states and make a recommendation to the Director on whether other states' certification programs meet or exceed requirements in this Part to receive an Illinois Certified Prescribed Burn Manager Certificate; review this Part and make recommendations to the Director for any needed changes; and prepare reports on prescribed burning at the request of the Director.

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Section 1565.EXHIBIT A Certified Prescribed Burn Manager Application

Directions: All applicants must complete PART A and attach the required documentation and submit any required fee to the Illinois Department of Natural Resources, Attention Prescribed Burn Manager Certification, One Natural Resources Way, Springfield IL, 62702-1271. Each applicant must complete either Part B, C or D and the documentation listed in that Part.

PART A:

SECTION A1: IDENTIFICATION*

Applicant Name: _____

Employer's Name (if applicable): _____

Applicant Address (Street Address, City, State, Zip Code):

Applicant Phone Number: _____

Applicant Date of Birth: _____

*Please provide a copy of your driver's license or other government issued identification card.

SECTION A2: CLASSROOM TRAINING**

Course Name: _____ Date: _____

Course Name: _____ Date: _____

Course Name: _____ Date: _____

**Attach copies of all listed course completion certificates. If additional space is needed to list courses, then attach a separate sheet listing course work.

SECTION A3: FEE

CHECK THIS BOX IF YOU ARE A STATE OF ILLINOIS EMPLOYEE AND EXEMPT FROM THE CERTIFICATION FEE: OTHERWISE, INCLUDE CHECK OR MONEY ORDER FOR \$50 MADE PAYABLE TO THE ILLINOIS DEPARTMENT OF NATURAL RESOURCES.

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SECTION A4: SIGNATURE

I certify that the information provided in this application is correct.

Applicant: _____ Date: _____

PART B:

SECTION B1: PRESCRIBED BURN PARTICIPATION

1) Location: _____ Date: _____

2) Location: _____ Date: _____

3) Location: _____ Date: _____

4) Location: _____ Date: _____

5) Location: _____ Date: _____

SECTION B2: PRESCRIBED BURNS WHERE APPLICANT SERVED AS AN APPRENTICE PRESCRIBED BURN MANAGER*

I have reviewed Section A and B1 and accept the above named person as an Apprentice Prescribed Burn Manager.

Certified Prescribed Burn Manager: _____
(Signature) (Date)

Name: _____ Certificate Number: _____
(Type or Print)

1) Location: _____ Date: _____

Certified Prescribed Burn Manager Supervising the Apprentice Prescribed Burn Manager

Name: _____ Certificate Number: _____
(Type or Print)

DEPARTMENT OF NATURAL RESOURCES

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2) Location: _____ Date: _____

Certified Prescribed Burn Manager Supervising the Apprentice Prescribed Burn Manager

Name: _____ Certificate Number: _____

(Type or Print)

*Attach copies of relevant Prescribed Burning Plans, Prescribed Burn Reports and performance evaluations signed by a Certified Prescribed Burn Manager supervising the Apprentice Prescribed Burn Manager.

PART C:

PREVIOUS PRESCRIBED BURN MANAGEMENT EXPERIENCE: Complete and notarize this part ONLY if you are claiming exemption from the apprentice requirements due to previous experience as a prescribed burn manager. Part C cannot be completed after December 31, 2010.

Pursuant to 17 Ill. Adm. Code 1565.20(d), prior to July 1, 2009, I have participated in at least seven prescribed burns, including at least five at which I have served as the Certified Prescribed Burn Manager.

By: _____

(Applicant's Signature)

STATE OF ILLINOIS

COUNTY OF _____

Signed and sworn (or affirmed) to before me this _____ day of _____

by _____

(applicant's name)

(Signature of Notary Public)

(SEAL)

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PART D:

Complete this part ONLY if you hold certification from another state that meets or exceeds the requirements of an Illinois Prescribed Burn Manager Certificate or hold a valid prescribed burn certification for a Prescribed Fire Boss under the NIIMS Wildfire Qualification System and you are claiming you qualify for an Illinois Certificate pursuant to 17 Ill. Adm. Code 1565.20(e) or (f).

Check the following box or boxes that apply:

- I hold a valid Prescribed Burn Manager Certificate or its equivalent from _____ (list state) and have attached to this application a copy of that certificate and a copy of my application used to obtain the certificate, or an official document from that state listing the general qualifications for certification.
- I hold certification as a Prescribed Fire Burn Boss Type 1 (RXB1) or Type 2 (RXB2) through the NIIMS Wildfire Qualification System and have attached a copy of that certification to this application.

I certify that the above information is correct.

Applicant's Signature: _____ Date: _____

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Selling and Consignment of Licenses, Stamps and Permits
- 2) Code Citation: 17 Ill. Adm. Code 2520
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
2520.10	Amendment
2520.20	Amendment
2520.30	Amendment
2520.40	Amendment
2520.50	Amendment
2520.60	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 1.4, 3.1, 3.2, 3.37, 3.38 and 3.39 of the Wildlife Code [520 ILCS 5/1.4, 3.1, 3.2, 3.37, 3.38 and 3.39] and Sections 1-125, 20-5, 20-10, 20-30, 20-45, 20-55 and 20-120 of the Fish and Aquatic Life Code [515 ILCS 5/1-125, 20-5, 20-10, 20-30, 20-45, 20-55 and 20-120]
- 5) Effective Date of Amendments: November 2, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including all material incorporated by reference, is on file in the Department of Natural Resources' principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: June 12, 2009; 33 Ill. Reg. 7541
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version:

In Section 2520.40(c), changed language to read "listing the typetype".

In Section 2520.50(c)(2), after the dash, added: "Individuals may request an application for a replacement license, stamp or permit from the Springfield office at the address in this subsection (c)(2).".

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- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were necessary.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This Part was amended to update the rule to better reflect current procedures and clearly define the difference between "agents" (those that receive consignments from DNR) and "vendors" (those authorized to issue licenses, stamps or permits by telephone or electronic transmission); update procedures for obtaining replacement licenses, stamps or permits; remove outdated information; and make grammatical changes. These amendments are needed to provide easier transition for having DNR customers pay the "convenience charge" due Active Network, Inc. as part of DNR's Fiscal Year 2010 fee package.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Stan Yonkauski, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/782-1809

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER f: ADMINISTRATIVE SERVICES

PART 2520

SELLING AND CONSIGNMENT OF LICENSES, STAMPS AND PERMITS

Section

- 2520.10 Agents – Sale and Consignment Requirements
- 2520.20 Issuing Licenses, Stamps and Permits
- 2520.30 Terms
- 2520.40 Credit to Agent-Vendor Accounts
- 2520.50 Issuance of Replacement Hunting, Fishing and Trapping Licenses, Stamps and Permits
- 2520.60 Vendor – Sale of Licenses by Telephone or Electronic Transmission

AUTHORITY: Implementing and authorized by Sections 1.4, 3.1, 3.2, 3.37, 3.38 and 3.39 of the Wildlife Code [520 ILCS 5/1.4, 3.1, 3.2, 3.37, 3.38 and 3.39] and Sections 1-125, 20-5, 20-10, 20-30, 20-45, 20-55 and 20-120 of the Fish and Aquatic Life Code [515 ILCS 5/1-125, 20-5, 20-10, 20-30, 20-45, 20-55 and 20-120].

SOURCE: Adopted and codified at 7 Ill. Reg. 8760, effective July 15, 1983; amended at 8 Ill. Reg. 5660, effective April 16, 1984; amended at 9 Ill. Reg. 14626, effective September 17, 1985; amended at 11 Ill. Reg. 4633, effective March 10, 1987; amended at 15 Ill. Reg. 7653, effective May 7, 1991; amended at 16 Ill. Reg. 8479, effective May 26, 1992; amended at 18 Ill. Reg. 9991, effective June 21, 1994; amended at 19 Ill. Reg. 7541, effective May 26, 1995; recodified by changing the agency name from Department of Conservation to Department of Natural Resources at 20 Ill. Reg. 9389; amended at 20 Ill. Reg. 14417, effective October 25, 1996; amended at 21 Ill. Reg. 6483, effective May 19, 1997; amended at 22 Ill. Reg. 10466, effective June 1, 1998; amended at 23 Ill. Reg. 6818, effective May 20, 1999; amended at 24 Ill. Reg. 1641, effective January 13, 2000; amended at 25 Ill. Reg. 9024, effective July 3, 2001; amended at 25 Ill. Reg. 11360, effective August 14, 2001; amended at 33 Ill. Reg. 15742, effective November 2, 2009.

Section 2520.10 Agents – Sale and Consignment Requirements

- a) The Department of Natural Resources (DNR) has the authority to designate agents to sell licenses, stamps and permits on behalf of ~~DNR~~the Department.
DNR also has the authority to consign~~consigns hunting, fishing, trapping and~~

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~~ginseng harvester licenses, migratory waterfowl, salmon and wildlife conservation stamps, and archery permits, hereinafter referred to as~~ licenses, stamps and permits, for sale by county, city, village, township and incorporated town clerks, upon receipt of their completed application and elected official license ~~agent~~ vendor contract, and fulfillment of requirements set forth in this Part. ~~DNR~~The Department also consigns ~~the~~ licenses, stamps and permits to other ~~persons, hereinafter referred to as "direct agents"~~, upon receipt of their completed application, license ~~agent~~ vendor contract, evidence of financial responsibility, and fulfillment of the requirements set forth in this Part. The term "~~direct agent~~" means all persons authorized by ~~DNR~~the Department to sell licenses, stamps and permits, other than elected or appointed officials and ~~DNR~~department employees. License ~~agents~~ vendors, including employees of ~~DNR~~the Department selling licenses, stamps and permits, shall collect an issuing fee in addition to the license, stamp and permit fee as provided in 515 ILCS 5/20-120 and 520 ILCS 5/3.37 as follows: 75 cents for each Sportsmen's Combination license and non-resident hunting license, and 50 cents for all other licenses, stamps and permits authorized by the above statutes. All licenses, stamps and permits consigned and fees collected from the sale of licenses, stamps and permits (except the authorized issuing fee) remain the property of the State of Illinois. Funds received from the sale of licenses, stamps and permits (except the authorized issuing fee) shall not be directed to any purpose other than remittance to ~~DNR~~the Department.

- b) County, city, village, township and incorporated town clerks may appoint sub-agents within the territorial area for which they are elected or appointed. Elected or appointed officials and ~~DNR~~Department employees selling licenses, stamps and permits are liable to the State for all licenses, stamps and permits consigned to their account, including any licenses, stamps and permits furnished by a clerk to any sub-agent. Any clerk appointing sub-agents must notify ~~DNR~~the Department, within 10 days following the appointment, the names and mailing addresses of such sub-agents. No part of the issuing fees collected may be retained as personal compensation by the clerk. Issuing fees may be divided between the clerk and appointed sub-agents other than employees of the ~~clerk's~~Clerk's office, but in no case may any clerk and/or sub-agent charge an issuing fee or fees totaling more than the amounts set out in subsection (a) of this Section. DNR assumes no liability for any license, stamp or permit furnished by any elected or appointed clerk to any sub-agent.
- c) Financial Responsibility of Agents
All ~~direct~~ agents, including concessionaires holding contracts with ~~DNR~~the

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~~Department~~ shall be required to furnish DNR with evidence of financial responsibility.

- 1) Agents Without Preferred Status
~~Except as provided in subsection (c)(2), the~~ Such evidence of financial responsibility shall be in the form of a surety bond, letter of credit or certificate of deposit, in an amount equal to the value of licenses, stamps and permits consigned ~~with the exception of direct agents with a preferred status.~~
- 2) Agents with Preferred Status
 - A) Agents~~Direct agents~~ must meet the following qualifications to receive a preferred status:
 - i) The ~~direct~~ agent must sell licenses, stamps and permits for one complete license year.
 - ii) ~~DNR~~The Department must have received a minimum of 9 monthly current license year remittances or no sales reports between April and December (inclusive).
 - B) If ~~these~~ qualifications listed in subsection (c)(2)(A) are met, the ~~direct~~ agent's consignments may total 50% over the amount of his or her~~their~~ financial evidence. All ~~direct~~ agents with a preferred status will be reviewed annually. If qualifications have been met, the preferred status will continue for the following license year. If the qualifications have not been met, the preferred status is removed and the ~~direct~~ agent will be consigned licenses, stamps and permits equal to the amount of financial evidence.
- 3) Evidence of Financial Responsibility
Surety bonds and letters of credit shall be on a form furnished by and approved by DNR, with surety or sureties satisfactory to DNR, conditioned upon the agents~~such agents~~ paying to the State of Illinois all monies becoming due by reason of the sale of licenses, stamps and permits.
- 4) Sub-Agents

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No ~~direct~~ agent may appoint sub-agents.

- d) Agents, other than ~~DNR Department~~ staff, issuing gun permits for deer and turkey hunting during special hunts on non-~~DNR Department~~ property, as defined in 17 Ill. Adm. Code 650.22(a) and 17 Ill. Adm. Code 660.22(a), ~~shall will~~ complete a written financial guarantee and fulfill the requirements set forth in this Part. All permits consigned and fees collected remain the property of the State of Illinois. Funds received from the sale of permits shall not be directed to any purpose other than remittance to ~~DNR the Department~~. Agents will not be consigned more than 100 permits of a specific type.

(Source: Amended at 33 Ill. Reg. 15742, effective November 2, 2009)

Section 2520.20 Issuing Licenses, Stamps and Permits

- a) License, stamp and permit forms shall be filled out accurately and legibly at the time of issuance, and the full amount shall be collected as shown on the license face. In the case of stamps, the license fee plus the authorized issuing fee shall be collected, if the issuing fee is not shown on the face of the stamp. ~~Agents Vendors~~ shall not back-date or issue an undated license.
- b) The application portion of each license shall be retained by the issuing clerk or agent until the license issued expires, except in the case of trapping licenses, goose permit stubs, habitat stamps, ginseng harvester licenses, archery permits, resident hunting licenses and habitat stamps, non-resident hunting licenses and habitat stamps, and resident sportsmen's licenses and habitat stamps for which the completed application must accompany the remittance.

(Source: Amended at 33 Ill. Reg. 15742, effective November 2, 2009)

Section 2520.30 Terms

- a) When funds received in payment for licenses, stamps and permits are deposited in an interest bearing account and ~~when where~~ fees collected by ~~an agent a vendor~~ are determined to be late to ~~DNR the Department~~ according to subsection (c) of this Section, interest that has accrued through an interest bearing license account on the overdue funds ~~shall will~~ be remitted to ~~DNR the Department~~ by separate check, along with fees collected from the sale of ~~thesuch~~ licenses, stamps and permits.

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- b) All license ~~agents~~~~vendors~~ shall be required to remit to ~~DNR~~~~the Department~~, as provided in subsection (c) ~~below~~, all funds received from the sale of licenses, stamps and permits during the preceding remittance period, except the authorized issuing fee. ~~Agents~~~~Vendors~~ having licenses, stamps and permits on hand for sale, but who have sold none during the remittance period, shall report this fact to ~~DNR~~~~the Department~~, as provided by subsection (c), by the use of a "no sales" report, furnished by ~~DNR~~~~the Department~~.
- c) Remittance shall be made to ~~DNR~~~~the Department~~ no later than the 10th of each month for all licenses, stamps and permits sold during the previous month.
- d) Accounts more than one month past due shall have additional license consignments withheld until the account is current. Accounts two months or more past due will cause ~~DNR~~~~the Department~~ to cancel or withdraw the issuance of licenses through ~~the clerk or agents~~~~such clerks or agents~~. In the case of secured agents, payment will be demanded from the security company. In the case of secured agents with a preferred status, payment up to the amount of financial evidence will be demanded from the security company and the balance over the financial evidence will be referred to other agencies for assistance. No installment payment agreements will be accepted by DNR except pursuant to judgment decrees.
- e) Within 30 days after the expiration of the time in which any class of license, stamp or permit is usable, the final payment for licenses, stamps and permits sold shall be made in full to ~~DNR~~~~the Department~~, and all unsold or void licenses, stamps and permits shall be returned to ~~DNR~~~~the Department~~. Accounts not closed out within the 30 days specified shall be suspended or terminated, and referred to the security company for action or referral to other agencies for assistance.

(Source: Amended at 33 Ill. Reg. 15742, effective November 2, 2009)

Section 2520.40 Credit to ~~Agent~~~~Vendor~~ Accounts

- a) Void or unsold licenses, stamps and permits shall be returned to ~~DNR~~~~the Department~~ for credit to the ~~agent~~~~vendor~~ account. Credit for void or unsold licenses, stamps and permits will be allowed only when the original license, stamp or permit is returned. The application portion of the license, stamp or permit will not be accepted for credit.

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- b) Credit to ~~agent~~~~vendor~~ accounts for void licenses, stamps and permits shall be denied if the license, stamp or permit shows signs of use, such as encasement in plastic or other signs of use. The license and permit supervisor is responsible for this determination, and if credit is denied, the Supervisor, License Section, shall cause the ~~agent~~~~vendor~~ to be notified of this action.
- c) No person selling licenses, stamps and permits is required to remit for any licenses, stamps or permits stolen by forcible entry or destroyed by a fire in the premises where ~~thesuch~~ licenses, stamps and permits are kept, if ~~the agent~~~~the~~ submits an affidavit to ~~DNR~~~~the Department~~ describing the circumstances of ~~thesuch~~ theft or cause of ~~such~~-destruction and listing the ~~type~~~~type~~ and numbers of licenses, stamps and permits ~~so~~-destroyed. An official report of the ~~fire or theft completed by the appropriated agency (such as the fire department~~ responding to the call or police if a robbery) must also be submitted.

(Source: Amended at 33 Ill. Reg. 15742, effective November 2, 2009)

Section 2520.50 Issuance of Replacement Hunting, Fishing and Trapping Licenses, Stamps and Permits

- a) ~~DNR~~~~The Department~~ will issue replacements for lost licenses, stamps and hunting, fishing, Sportsman's Combination, Ginseng harvester, commercial licenses and permits, trapping licenses, Illinois stamps and archery permits. A fee of \$3.00 per license, stamp or permit will be charged to defray the cost of handling.
- b) ~~DNR~~~~The Department~~ will issue replacements at no cost when ~~DNR~~~~the Department~~ loses the sportsman's~~sportsman's~~ hunting, fishing, Sportsman's Combination, ginseng harvester~~Ginseng Harvester~~, or trapping licenses, stamps or ~~archery~~ permits.
- c) The procedure for obtaining a replacement license, stamp or permit is as follows:
- 1) Individual loss of a license, stamp or permit issued by an agent – An~~The~~ individual may request~~arequesting the~~ replacement license, stamp or permit from any agent location. The individual may obtain a replacement license, stamp or permit from any agent for a \$3.00 fee per license, stamp or permit.~~should obtain from the vendor from which the original license,~~

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~~stamp or permit was purchased, a copy (or the original) of the license, stamp or permit application. If the application is unavailable, the individual may obtain "a Replacement License/Stamp/Permit Application" from any license vendor or the Department. "A Replacement License/Stamp/Permit Application" must be notarized to ensure that the application is accurate and non-fraudulent. The copy of the original application, or properly completed and notarized "A Replacement License/Stamp/Permit Application" should then be forwarded with the \$3.00 fee per license, stamp or permit to any of the following offices:~~

- 2) Individual loss of a license, stamp or permit consigned from DNR – Individuals may request an application for a replacement [license](#), stamp or permit from the Springfield office at the address in this subsection (c)(2). The individual requesting the replacement license, stamp or permit should return a copy of the original application or a properly completed and notarized Replacement License, Stamp or Permit Application and forward it with a \$3.00 fee per license, stamp or permit to:

- A) Illinois Department of Natural Resources
P.O. Box 19459
Springfield, IL 62794-9459
- B) Illinois Department of Natural Resources
2317 E. Lincolnway Suite A
Sterling, IL 61081
- C) Illinois Department of Natural Resources
110 James Road
Spring Grove, IL 60081
- D) Illinois Department of Natural Resources
2005 Round Barn Road
Champaign, IL 61821
- E) Illinois Department of Natural Resources
4521 Alton Commerce Parkway
Alton, IL 62002
- F) Illinois Department of Natural Resources

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~~11731 State Highway 37
Benton, IL 62812~~

~~G) Illinois Department of Natural Resources
100 West Randolph
Suite 4 - Room 300
Chicago, IL 60601~~

~~3)2) DNRDepartment loss – The DNRDepartment location requesting the replacement should complete on agency letterhead a request for a replacement and forward the request to: Department of Natural Resources, Replacements, One Natural Resources Way~~524 S. Second Street~~, Springfield, IL 62702~~62701~~. The request should be completed in triplicate with one copy retained at the location and one copy given to the person whose license, stamp or permit was lost. This copy of the request will allow the person to hunt or fish in the interim prior to receipt of ~~the~~between receiving a replacement. Information contained in the replacement request letter must include:~~

- A) date of the letter;
- B) indication that the letter may be used by the person in lieu of a license, stamp or permit for up to 30 days from the date on the letter;
- C) DNRDepartment location requesting the replacement (including address and contact phone number);
- D) the name, complete mailing address, county of residence, date of birth, height, weight, hair color, eye color and daytime phone number of the person receiving the replacement;
- E) indication of what licenses, stamps or permits need to be replaced; and
- F) the printed or typed names and signatures and the date of signature of the authorized persons at the DNRDepartment location issuing the replacement letter and the location supervisor.

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(Source: Amended at 33 Ill. Reg. 15742, effective November 2, 2009)

Section 2520.60 Vendor – Sale of Licenses by Telephone or Electronic Transmission

- a) ~~A "vendor" is any person authorized by DNR to issue licenses, stamps or permits by telephone or electronic transmission (such as the Internet). To become a vendor, a person or business~~ Persons or businesses authorized to issue licenses, stamps or permits and wishing to perform this service by telephone or electronic transmission (such as the Internet) while passing on to the customer a transaction cost above the 50-75 cent issues fee must:
- 1) ~~make~~ Make a request to ~~DNR~~ the Department in writing detailing the proposed process and indicating the types of licenses, stamps or permits that would be sold from the service~~;~~
 - 2) ~~comply~~ Comply with all existing license vendor regulations~~;~~
 - 3) ~~if~~ If a telephone service is offered, insure that the service is a toll-free phone service~~;~~
 - 4) ~~package~~ Package and ship the license, stamp or permit to the customer within 24 hours after receipt of the customer's request~~;~~
 - 5) ~~retain~~ Retain sales information for at least 24 months~~; and-~~
 - 6) ~~allow DNR~~ Allow Department staff to audit the process and vendor books.
- b) The ~~vendor~~ issuing agent may collect an additional convenience charge ~~a convenience fee to the customer~~, set pursuant to the competitive bidding procedures of the Illinois Procurement Code [30 ILCS 500] to cover the cost of the transaction, including ~~shipping~~ mailing and handling fees. Any convenience ~~charge paid by an individual buyer shall~~ fee passed on to the customer must be clearly identified ~~as a convenience charge on the license receipt~~ to minimize confusion by clarifying that the fee is not a license fee increase and not a fee passed on to the Department.
- c) ~~The vendor must~~ If a confirmation number is assigned to the customer for the transaction, the issuing agent will:

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- 1) ~~assign a confirmation number to all individual buyers of licenses, stamps or permits; Seek and obtain permission from the license buyer to put the buyer's signature or initials on the signature area of the license.~~
- 2) ~~record~~Record the individual buyer's driver's license number and state of issue or some other means of identification, approved by DNR, to identify place of legal residency when the individual buyer is purchasing a resident license;:-
- 3) ~~issue~~Issue a unique confirmation number to the individual buyer based on an approved formula from DNR;the Department.
- 4) ~~instruct~~Instruct the individual buyer purchasing a license, stamp or permit by telephone that ~~he or she~~they must record the assigned confirmation number on a piece of paper, along with the individual buyer'sperson's name, and date of birth, date of the transaction, and mailing address. The individual buyer shall alsoBuyer will be instructed that this piece of paper must contain the buyer's signature and be kept on the buyer's person while fishing or hunting, until the buyer receives the license in the mail;:-
- 5) ~~instruct~~Instruct the individual buyer that use of the assigned confirmation number as a temporary hunting or fishing license is only valid ~~for up to~~ 30 days from the date of sale; and-
- 6) ~~immediately~~Immediately update a license verification database with allthe transaction information.

(Source: Amended at 33 Ill. Reg. 15742, effective November 2, 2009)

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- 1) Heading of the Part: Nitrogen Oxides Emissions
- 2) Code Citation: 35 Ill. Adm. Code 217
- 3) Section Number: 217.751 Adopted Action: New
- 4) Statutory Authority: 415 ILCS 5/27 and 28
- 5) Effective Date of Amendment: November 2, 2009
- 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 amendment, including any material incorporated by reference, is on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500 and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 33 Ill. Reg. 8880; June 26, 2009.
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Differences between proposal and final version: The text of the added 35 Ill. Adm. Code 217.751 contains no substantive changes from the first notice proposal. However, the table of contents of Part 217 has been revised to include Subparts D through M, due to the recent completion of other air rulemakings. See, Section 27 Proposed Rules for Nitrogen Oxide (NO_x) Emissions From Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217, R07-19 (July 23, 2009) and Nitrogen Oxides Emissions From Various Source Categories, Amendments to 35 Ill. Adm. Code Parts 211 and 217, R08-19 (Aug. 20, 2009).
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? No agreements were necessary.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No

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- 15) Summary and Purpose of Amendment: The Board's May 7, 2009 first notice opinion and order in In the Matter of: Nitrogen Oxide (NO_x) Trading Program Sunset Provisions for Electric Generating Units (EGU's): New 35 Ill. Adm. Code 217.751, R09-20 discusses in detail the amendments to Part 217.Subpart W proposed in this rulemaking.

On May 7, 2009, the Illinois Pollution Control Board authorized first notice publication, without comment on the merits, of an Illinois Environmental Protection Agency (IEPA) proposal that would sunset the provisions of the Nitrogen Oxides (NO_x) Trading Program rules for electrical generating units (EGUs). IEPA filed this proposal with the Board on April 21, 2009, seeking to add a single new section, 35 Ill. Adm. Code 217.751 to 35 Ill. Adm. Code 217.Subpart W. The Board has expedited this proceeding as requested by the IEPA.

In its statement of reasons, the IEPA states that Illinois adopted both the NO_x rules at 35 Ill. Adm. Code 217 and the Clean Air Interstate Rule (CAIR) at 35 Ill. Adm. Code 225 after adoption of similar rules by the United States Environmental Protection Agency (USEPA). USEPA has approved both sets of rules for inclusion in the State Implementation Plan (SIP) for ozone attainment. As do the USEPA rules, the CAIR provisions, as set forth in 35 Ill. Code 225.Subpart E, include a trading program for control of NO_x emissions during the ozone season that replaces the provisions in Part 217.Subpart W for EGUs beginning with the 2009 control period (May 1 through September 30) and thereafter. To address this duplication, the proposal would "sunset" the provisions of the NO_x Trading Program by adding a new Part 217.751.

The Board adopted its second notice opinion and order on September 17, 2009, adopting the first notice proposal without substantive change. The Joint Committee on Administrative Rules voted a Certificate of No Objection at its October 14, 2009 meeting. The Board adopted its final opinion and order on October 15, 2009.

For the above reasons, the Board adopted as a final rule R09-20.

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

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

312/814-6929

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Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R09-20 in your request. The Board's opinions and orders are also available from the Board's Web site (www.ipcb.state.il.us).

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

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

PART 217
NITROGEN OXIDES EMISSIONS

SUBPART A: GENERAL PROVISIONS

- Section
- 217.100 Scope and Organization
- 217.101 Measurement Methods
- 217.102 Abbreviations and Units
- 217.103 Definitions
- 217.104 Incorporations by Reference

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

- Section
- 217.121 New Emission Sources (Repealed)

SUBPART C: EXISTING FUEL COMBUSTION EMISSION UNITS

- Section
- 217.141 Existing Emission Units in Major Metropolitan Areas

SUBPART D: NO_x GENERAL REQUIREMENTS

- Section
- 217.150 Applicability
- 217.152 Compliance Date
- 217.154 Performance Testing
- 217.155 Initial Compliance Certification
- 217.156 Recordkeeping and Reporting
- 217.157 Testing and Monitoring
- 217.158 Emissions Averaging Plans

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SUBPART E: INDUSTRIAL BOILERS

Section

- 217.160 Applicability
- 217.162 Exemptions
- 217.164 Emissions Limitations
- 217.165 Combination of Fuels
- 217.166 Methods and Procedures for Combustion Tuning

SUBPART F: PROCESS HEATERS

Section

- 217.180 Applicability
- 217.182 Exemptions
- 217.184 Emissions Limitations
- 217.185 Combination of Fuels
- 217.186 Methods and Procedures for Combustion Tuning

SUBPART G: GLASS MELTING FURNANCES

Section

- 217.200 Applicability
- 217.202 Exemptions
- 217.204 Emissions Limitations

SUBPART H: CEMENT AND LIME KILNS

Section

- 217.220 Applicability
- 217.222 Exemptions
- 217.224 Emissions Limitations

SUBPART I: IRON AND STEEL AND ALUMINUM MANUFACTURING

Section

- 217.240 Applicability
- 217.242 Exemptions
- 217.244 Emissions Limitations

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SUBPART K: PROCESS EMISSION SOURCES

Section
217.301 Industrial Processes

SUBPART M: ELECTRICAL GENERATING UNITS

Section
217.340 Applicability
217.342 Exemptions
217.344 Emissions Limitations
217.345 Combination of Fuels

SUBPART O: CHEMICAL MANUFACTURE

Section
217.381 Nitric Acid Manufacturing Processes

SUBPART Q: STATIONARY RECIPROCATING
INTERNAL COMBUSTION ENGINES AND TURBINES

Section
217.386 Applicability
217.388 Control and Maintenance Requirements
217.390 Emissions Averaging Plans
217.392 Compliance
217.394 Testing and Monitoring
217.396 Recordkeeping and Reporting

SUBPART T: CEMENT KILNS

Section
217.400 Applicability
217.402 Control Requirements
217.404 Testing
217.406 Monitoring
217.408 Reporting
217.410 Recordkeeping

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SUBPART U: NO_x CONTROL AND TRADING PROGRAM FOR
SPECIFIED NO_x GENERATING UNITS

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217.450	Purpose
217.452	Severability
217.454	Applicability
217.456	Compliance Requirements
217.458	Permitting Requirements
217.460	Subpart U NO _x Trading Budget
217.462	Methodology for Obtaining NO _x Allocations
217.464	Methodology for Determining NO _x Allowances from the New Source Set-Aside
217.466	NO _x Allocations Procedure for Subpart U Budget Units
217.468	New Source Set-Asides for "New" Budget Units
217.470	Early Reduction Credits (ERCs) for Budget Units
217.472	Low-Emitter Requirements
217.474	Opt-In Units
217.476	Opt-In Process
217.478	Opt-In Budget Units: Withdrawal from NO _x Trading Program
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SUBPART V: ELECTRIC POWER GENERATION

Section	
217.521	Lake of Egypt Power Plant
217.700	Purpose
217.702	Severability
217.704	Applicability
217.706	Emission Limitations
217.708	NO _x Averaging
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SUBPART W: NO_x TRADING PROGRAM FOR
ELECTRICAL GENERATING UNITS

Section	
217.750	Purpose
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217.752	Severability
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217.756	Compliance Requirements
217.758	Permitting Requirements
217.760	NO _x Trading Budget
217.762	Methodology for Calculating NO _x Allocations for Budget Electrical Generating Units (EGUs)
217.764	NO _x Allocations for Budget EGUs
217.768	New Source Set-Asides for "New" Budget EGUs
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217.774	Opt-In Units
217.776	Opt-In Process
217.778	Budget Opt-In Units: Withdrawal from NO _x Trading Program
217.780	Opt-In Units: Change in Regulatory Status
217.782	Allowance Allocations to Budget Opt-In Units

SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

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217.805	Emission Unit Eligibility
217.810	Participation Requirements
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217.820	Baseline Emissions Determination
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217.830	Limitations on NO _x Emission Reductions
217.835	NO _x Emission Reduction Proposal
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217.APPENDIX A	Rule into Section Table
217.APPENDIX B	Section into Rule Table
217.APPENDIX C	Compliance Dates
217.APPENDIX D	Non-Electrical Generating Units
217.APPENDIX E	Large Non-Electrical Generating Units

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- 217.APPENDIX F Allowances for Electrical Generating Units
217.APPENDIX G Existing Reciprocating Internal Combustion Engines Affected by the NO_x SIP Call
217.APPENDIX H Compliance Dates for Certain Emissions Units at Petroleum Refineries

AUTHORITY: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28.5 (2004)].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-18 at 31 Ill. Reg. 14271, effective September 25, 2007; amended in R07-19 at 33 Ill. Reg. 11999, effective August 6, 2009; amended in R08-19 at 33 Ill. Reg. 13345, effective August 31, 2009; amended at 33 Ill. Reg. 15754, effective November 2, 2009.

SUBPART W: NO_x TRADING PROGRAM FOR
ELECTRICAL GENERATING UNITS

Section 217.751 Sunset Provisions

The provisions of this Subpart W shall not apply for any control period in 2009 or thereafter. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

(Source: Added at 33 Ill. Reg. 15754, effective November 2, 2009)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Adverse Health Care Event Reporting Code
- 2) Code Citation: 77 Ill. Adm. Code 235
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
235.110	New
235.120	New
235.130	New
235.140	New
235.150	New
235.160	New
235.170	New
235.180	New
- 4) Statutory Authority: Adverse Health Care Event Reporting Law of 2005 [410 ILCS 522]
- 5) Effective Date of Rulemaking: October 30, 2009
- 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 Rules Published in Illinois Register: December 19, 2008; 32 Ill. Reg. 19425
- 10) Has JCARE issued a Statement of Objection to these rules? No
- 11) Differences between proposal and final version:

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

1. In Section 235.110, all text in the definition of "Hypoglycemia" was deleted and new text was added as follows:

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"Hypoglycemia is defined as blood glucose levels <70 milligrams/deciliter based on National Institute of Health (NIH) guidelines and American Diabetes Association Standards of Medical Care, although severe hypoglycemia usually occurs with blood glucose levels < 60 mg/dl. Hypoglycemia may occur with or without symptoms, as hypoglycemic unawareness can be present in some individuals. Patient death or serious disability related to hypoglycemia that occurs while the patient is being cared for in a health care facility for a condition unrelated to hypoglycemia (such as congestive heart failure or foot amputation) would qualify as an adverse event."

2. In Section 235.110, the definition of "Inpatient" was deleted.
3. In Section 235.130(b)(1), text was added after "*product*" as follows: "For example, devices and drugs that are intended to be sterile and are not, rather than devices that may be contaminated after use begins."
4. In Section 235.130(b)(2), text was added after "*ventilators*" as follows: "For example, use of a Foley catheter (for urinary drainage) to put in a central venous line, thus using the wrong equipment. Not, for example, using the correct device incorrectly, such as inserting a naso-gastric tube in the larynx instead of the esophagus."
5. In Section 235.130(f), a new subsection (5) was added as follows: "In case of an event listed in subsection (f)(4) in which a staff member is harmed, the health care facility shall generate a report to the Department, substituting staff information for patient information."
6. In Section 235.140(a), text was added after "electronic means" as follows: "The electronic system shall have uniform reporting templates, automated report receipts, a user "save" feature and automatic reminders to report the 90-day Root Cause Analysis and Corrective Action Plan."
7. In Section 235.140(f), "date of birth" was deleted and "age (range)" was added.
8. In the heading for Section 235.150, "**Findings**" was added after "**Analysis**".
9. In Section 235.150(c), "findings" was added after "analysis".

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10. Subsection 235.150(c)(3) was deleted and subsections (c)(4), (5), and (6) were renumbered.
11. In Section 235.150(g), "four" was deleted and "eight" was inserted; "eight" was deleted and "18" was inserted.
12. In Section 235.150(c)(3)(I), "health care facility" was deleted and "physical" was inserted.

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

1. In Section 235.110, the definition of "Major life activity" was changed to "activity of daily living that an individual can perform with little or no difficulty, such as walking, seeing, hearing, eating, speaking, breathing, learning, performing manual tasks or taking care of one's self".
 2. In Section 235.110, in the definition of "Systemic disturbance", "body or" was changed to "health care".
 3. In Section 235.140, subsections (a)(6) and (7) were deleted and all subsections relabeled as (a) through (n).
 4. In Section 235.140(m), "including an apology to the patient and/or patient's family" was changed to "including if the patient and/or the patient's family was informed of the event".
 5. In Section 235.150(d)(1), ", including if an apology was given to the patient and/or the patient's family" was added before the semicolon.
 6. In Section 235.180, line 7, "and" was changed to "or".
 7. In addition, various typographical, grammatical, and format changes were made.
- 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 any emergency rulemaking currently in effect? No
 - 14) Are there any amendments pending on this Part? No

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- 15) Summary and Purpose of Rulemaking: These rules implement the Illinois Adverse Health Care Events Reporting Law of 2005 (Law). The rules establish a health care facility reporting system for adverse health care events, as such events are defined in the Law. The Law defines "health care facilities" as hospitals and ambulatory surgical treatment centers. The rules set forth definitions; time frames for reporting events; the required elements of the report; and necessary follow-up reporting, which includes a root cause analysis and corrective action plan. The Department's communication with the health care facilities and the Annual Report are described. Enforcement provisions for noncompliance are also included, as well as a confidentiality provision.
- 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, Illinois 62761
e-mail: dph.rules@illinois.gov

Phone: 217/782-2043

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED RULES

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIESPART 235
ADVERSE HEALTH CARE EVENT REPORTING CODE

Section

235.110	Definitions
235.120	Referenced Materials
235.130	Adverse Health Care Events
235.140	Adverse Health Care Event Reporting System
235.150	Root Cause Analysis Findings and Corrective Action Plan
235.160	Communication and Annual Report
235.170	Enforcement
235.180	Confidentiality

AUTHORITY: Implementing and authorized by the Illinois Adverse Health Care Events Reporting Law of 2005 [410 ILCS 522].

SOURCE: Adopted at 33 Ill. Reg. 15763, effective October 30, 2009.

Section 235.110 Definitions

For the purpose of this Part:

"ABO-incompatible blood or blood products" means blood or blood products that are inconsistent with a given patient's blood type.

"Act" means the Illinois Adverse Health Care Events Reporting Law of 2005 [410 ILCS 522].

"Admitting diagnosis code" means a standard medical code associated with an injury or illness of a patient, which is assigned to the patient at the time of admission to the health care facility.

"Adverse health care event" means any event listed in Section 235.130 of this Part.

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"Biologics" means products made from living organisms. Biologics are derived from living material (human, plant, animal or microorganism) and used for the treatment, prevention, or cure of disease in humans.

"Contamination" means the presence of a detectable foreign substance or material that renders a substance, preparation, device or equipment impure, unstable or unsuitable for use.

"Corrective action plan" means a document that describes the specific steps that the health care facility has taken or intends to take to resolve or reduce the risk of similar adverse health care events occurring in the facility. This document will address responsibility for implementation, oversight, time lines and strategies for measuring the effectiveness of the actions.

"Death" means patient death related to an adverse event and not related solely to the natural course of the patient's illness or underlying condition. Events otherwise reportable under this Part shall be reported even if the death might have otherwise occurred as the natural course of the patient's illness or underlying condition. (Section 10-15(h) of the Act)

"Department" means the Illinois Department of Public Health. (Section 10-10 of the Act)

"Device" includes, but is not limited to, catheters, drains and other specialized tubes, infusion pumps and ventilators. (Section 10-15 of the Act)

"Findings of root cause analysis" means the conclusions of the organizational root cause analysis that summarize how the adverse event happened and reasons for the adverse event occurrence. Reportable findings do not include investigatory notes, data, staff interviews and other unrelated documentation that led to the conclusions of the root cause analysis.

"Health care facility" means a hospital maintained by the State or any department or agency of the State where such department or agency has authority under law to establish and enforce standards for the hospital under its management and control a hospital maintained by any university or college established under the laws of this State and supported principally by public funds raised by taxation, a hospital licensed under the Hospital Licensing Act [210 ILCS 85], a hospital organized under the University of Illinois Hospital Act [110 ILCS 330], and an

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ambulatory surgical treatment center licensed under the Ambulatory Surgical Treatment Center Act [210 ILCS 5]. (Section 10-10 of the Act)

"Health care facility environment" means the totality of the conditions of a health care facility, including infrastructure, services and physical plant.

"Hypoglycemia" is defined as blood glucose levels <70 milligrams/deciliter, based on National Institute of Health (NIH) guidelines and American Diabetes Association Standards of Medical Care, although severe hypoglycemia usually occurs with blood glucose levels <60 mg/dl. Hypoglycemia may occur with or without symptoms, as hypoglycemic unawareness can be present in some individuals. Patient death or serious disability related to hypoglycemia that occurs while the patient is being cared for in a health care facility for a condition unrelated to hypoglycemia (such as congestive heart failure or foot amputation) would qualify as an adverse event.

"Low risk pregnancy" means a pregnancy that is anticipated to be free of problems based on a woman's past medical history, past gynecological and obstetric history and any other relevant issues as the pregnancy continues.

"Major life activity" means an activity of daily living that an individual can perform with little or no difficulty, such as walking, seeing, hearing, eating, speaking, breathing, learning, performing manual tasks or taking care of one's self.

"Principal procedure code" means a code that identifies the procedure performed for definitive treatment of a patient, rather than for diagnostic or exploratory purposes, or that is necessary to take care of a complication.

"Process" means a systematic sequence of actions used to produce something or achieve an end.

"Product" means something produced by human or mechanical effort or by a natural process.

"Restraint" means any method of restricting a patient's freedom of movement that is not a usual and customary part of a medical diagnostic or treatment procedure to which the patient or his or her legal representative has consented; is not

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indicated to treat the patient's medical condition or symptoms; or does not promote the patient's independent functioning.

"Root cause" means a fundamental reason or reasons for an adverse event, without which the adverse health care event would not have occurred.

"Root cause analysis" means the process for determining how an error occurred.

"Serious disability" means a physical or mental impairment, including loss of a body part, related to an adverse event and not related solely to the natural course of the patient's illness or underlying condition, that substantially limits one or more of the major life activities of an individual or results in a loss of bodily function, if the impairment or loss lasts more than 7 days prior to discharge or is still present at the time of discharge from an inpatient health care facility.
(Section 10-15(h) of the Act)

"Sexual Assault" means an act of nonconsensual forced sexual penetration or sexual conduct as defined in Section 12-12 of the Criminal Code of 1961 [720 ILCS 5], including, without limitation, acts prohibited under Sections 12-13 through 12-16 of the Criminal Code of 1961.

"Significant injury" means harm or hurt through damage inflicted on the body by an external force.

"Surgery" means treatment of diseases or injuries by manual and/or instrumental methods. Such methods may include invasive, minimally invasive or non-invasive procedures, depending on the conditions treated and the nature of the instruments and technology used.

"System" means a set of interdependent elements, both human and nonhuman, interacting to achieve a common goal.

"Systemic disturbance" means a human or nonhuman malfunction, intrusion or interruption that affects multiple organs, tissues or processes, or affects the health care organization as a whole.

Section 235.120 Referenced Materials

The following materials are referenced in this Part:

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- a) State of Illinois statutes:
- 1) Hospital Licensing Act [210 ILCS 85]
 - 2) Ambulatory Surgical Treatment Center Act [210 ILCS 5]
 - 3) University of Illinois Hospital Act [110 ILCS 330]
 - 4) Criminal Code of 1961 [720 ILCS 5]
 - 5) Code of Civil Procedure, Article VIII, Part 21 [735 ILCS 5/Art. VIII, Part 21]
- b) State of Illinois Administrative Rules
Rules of Practice and Procedure in Administrative Hearings (Illinois Department of Public Health) (77 Ill. Adm. Code 100)

Section 235.130 Adverse Health Care Events

The following are "adverse health care events" for the purposes of the requirements of the Act and this Part:

- a) *Surgical events. Events reportable under this subsection are:*
- 1) *Surgery performed on a wrong body part that is not consistent with the documented informed consent for that patient. Reportable events under this subsection do not include situations requiring prompt action that occur in the course of surgery or situations whose urgency precludes obtaining informed consent.*
 - 2) *Surgery performed on the wrong patient.*
 - 3) *The wrong surgical procedure performed on a patient that is not consistent with the documented informed consent for that patient. Reportable events under this subsection do not include situations requiring prompt action that occur in the course of surgery or situations whose urgency precludes obtaining informed consent.*

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- 4) *Retention of a foreign object in a patient after surgery or other procedure, excluding objects intentionally implanted as part of a planned intervention and objects present prior to surgery that are intentionally retained.*
 - 5) *Death during or immediately after surgery of a normal, healthy patient who has no organic, physiologic, biochemical, or psychiatric disturbance and for whom the pathologic processes for which the operation is to be performed are localized and do not entail a systemic disturbance. (Section 10-15(b) of the Act)*
- b) *Product or device events. Events reportable under this subsection are:*
- 1) *Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the health care facility when the contamination is the result of generally detectable contaminants in drugs, devices, or biologics regardless of the source of the contamination or the product. For example, devices and drugs that are intended to be sterile and are not, rather than devices that may be contaminated after use begins.*
 - 2) *Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended. "Device" includes, but is not limited to, catheters, drains, and other specialized tubes, infusion pumps, and ventilators. For example, use of a Foley catheter (for urinary drainage) to insert a central venous line, thus using the wrong equipment. Not, for example, using the correct device incorrectly, such as inserting a naso-gastric tube in the larynx instead of the esophagus.*
 - 3) *Patient death or serious disability associated with intravascular air embolism that occurs while being cared for in a health care facility, excluding deaths associated with neurosurgical procedures known to present a high risk of intravascular air embolism. (Section 10-15(c) of the Act)*
- c) *Patient protection events. Events reportable under this subsection are:*
- 1) *An infant discharged to the wrong person.*

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- 2) *Patient death or serious disability associated with patient disappearance for more than 4 hours, excluding events involving adults who have decision-making capacity.*
 - 3) *Patient suicide or attempted suicide resulting in serious disability while being cared for in a health care facility due to patient actions after admission to the health care facility, excluding deaths resulting from self-inflicted injuries that were the reason for admission to the health care facility. (Section 10-15(d) of the Act)*
- d) *Care management events. Events reportable under this subsection are:*
- 1) *Patient death or serious disability associated with a medication error, including, but not limited to, errors involving the wrong drug, the wrong dose, the wrong patient, the wrong time, the wrong rate, the wrong preparation, or the wrong route of administration, excluding reasonable differences in clinical judgment on drug selection and dose.*
 - 2) *Patient death or serious disability associated with a hemolytic reaction due to the administration of ABO-incompatible blood or blood products.*
 - 3) *Maternal death or serious disability associated with labor or delivery in a low-risk pregnancy while being cared for in a health care facility, excluding deaths from pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy, or cardiomyopathy.*
 - 4) *Patient death or serious disability directly related to hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility for a condition unrelated to hypoglycemia. (Section 10-15(e) of the Act)*
- e) *Environmental events. Events reportable under this subsection are:*
- 1) *Patient death or serious disability associated with an electric shock while being cared for in a health care facility, excluding events involving planned treatments such as electric countershock.*

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- 2) *Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances.*
 - 3) *Patient death or serious disability associated with a burn incurred from any source while being cared for in a health care facility that is not consistent with the documented informed consent for that patient. Reportable events under this subsection do not include situations requiring prompt action that occur in the course of surgery or situations whose urgency precludes obtaining informed consent.*
 - 4) *Patient death or serious disability associated with a fall while being cared for in a health care facility.*
 - 5) *Patient death or serious disability associated with the use of restraints or bedrails while being cared for in a health care facility. (Section 10-15(f) of the Act)*
- f) *Physical security events. Events reportable under this subsection are:*
- 1) *Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider.*
 - 2) *Abduction of a patient of any age.*
 - 3) *Sexual assault on a patient within or on the grounds of a health care facility.*
 - 4) *Death or significant injury of a patient or staff member resulting from a physical assault that occurs within or on the grounds of a health care facility. (Section 10-15(g) of the Act)*
 - 5) *In case of an event listed in subsection (f)(4) in which a staff member is harmed, the health care facility shall generate a report to the Department, substituting staff information for patient information.*

Section 235.140 Adverse Health Care Event Reporting System

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Reports of adverse health care events required. Each health care facility shall report to the Department the occurrence of any of the adverse health care events described in Section 235.130 of this Part no later than 30 days after discovery of the event. (Section 10-15(a) of the Act) The reports required by the Act and this Part may be filed by electronic means. The electronic system shall have uniform reporting templates, automated report receipts, a user "save" feature and automatic reminders to report the 90-day Root Cause Analysis and Corrective Action Plan. Reports of adverse health care events shall include:

- a) The name, address and Department-assigned unique identifier of the health care facility making the report;
- b) The name, title and contact information of the person making the report;
- c) The exact location within the health care facility where the adverse health care event occurred;
- d) The date and time that the adverse health care event occurred;
- e) The date and time that any employee, contractor or representative of the health care facility was notified of the occurrence of the adverse health care event;
- f) Gender and age (range) of the patient;
- g) Race or ethnicity of the patient;
- h) Language spoken by patient; if the language was not English, was a translator present;
- i) Date on which the patient was admitted;
- j) Admitting diagnosis code of the patient;
- k) Principal procedure code of the patient if the event involved surgery;
- l) Description of the adverse health care event, including number and type of staff present at time of the event;

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- m) Any immediate or emergency remedial actions taken prior to filing the adverse health care event report, including if the patient and/or the patient's family was informed of the event; and
- n) The outcome for the patient from the adverse event.

Section 235.150 Root Cause Analysis Findings and Corrective Action Plan

- a) *Following the occurrence of an adverse health care event, the health care facility must conduct a root cause analysis of the event. Following the analysis, the health care facility must:*
 - 1) *Implement a corrective action plan to address the findings of the analysis;*
or
 - 2) *Report to the Department any reasons for not taking corrective action.*
- b) *A copy of the findings of the root cause analysis and a copy of the corrective action plan must be filed with the Department within 90 days after the submission of the report to the Department. (Section 10-20 of the Act)*
- c) The root cause analysis findings shall:
 - 1) Focus primarily on systems and processes;
 - 2) Progress from specific direct causes in clinical processes to contributing causes in organizational processes;
 - 3) Contain the following key elements:
 - A) Details of the adverse health care event;
 - B) Identification of any human factors related to the adverse health care event;
 - C) Examination of any related processes and systems in place during the adverse health care event;

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- D) Analysis of staffing levels at the times before, during and after the adverse health care event;
 - E) Analysis of staff communication before, during and after the adverse health care event;
 - F) Analysis of the training and education of staff in connection with the systems and processes associated with the root cause analysis of the adverse health care event;
 - G) Analysis of any actions, inactions, literacy or knowledge gaps of the patient that may have contributed to the adverse health care event;
 - H) Assessment of the equipment involved in the adverse health care event, if any;
 - I) Analysis of the physical environment before, during and after the adverse health care event;
 - J) Identification of any external factors beyond the control of the health care facility; and
 - K) Identification of any other factors related to the adverse health care event;
- 4) Describe contributing and underlying factors to the root cause; and
 - 5) Identify changes that could be made in systems and processes, either through redesign of existing systems or processes or development of new systems or processes, that would reduce the risk of such events occurring in the future.
- d) The corrective action shall include:
- 1) Specific actions to correct the identified causes of the event to prevent a similar event occurring in the future, including if an apology was given to the patient and/or the patient's family;

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- 2) Identified and measurable outcomes;
- 3) A designated person responsible for implementation and evaluation; and
- 4) A specific implementation plan with the following:
 - A) Completion dates;
 - B) Provisions for education of and communication with appropriate hospital staff; and
 - C) A description of how the hospital's performance will be assessed and evaluated following full implementation.
- e) The Department will determine whether the root cause analysis and corrective action plan are acceptable, based on the requirements of this Section. If the root cause analysis and corrective action plan are acceptable, the Department will instruct the facility to begin follow-up activity to measure the success of the corrective action plan.
- f) If the Department determines that the root cause analysis and corrective action plan are unacceptable, based on the requirements of this Section, the Department will provide consultation on the criteria that have not been met and will allow an additional time period (up to 30 calendar days) for resubmission.
- g) A health care facility shall report to the Department regarding the outcome of the corrective action plans at eight and 18 months following the initiation of the plan.

Section 235.160 Communication and Annual Report

The Department will communicate with *health care facilities to maximize the use of the adverse health care event reporting system to improve health care quality.* (Section 10-30(b) of the Act)

- a) The Department will collect and analyze data from adverse health care event reports *to determine patterns of system failure in the health care system and successful methods to correct these failures.* (Section 10-30(b) of the Act)
- b) The data collected will be used to provide adverse health care event prevention recommendations to Illinois health care facilities and to help to ensure a data base

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of adverse health care event reports that will provide greater understanding of adverse health care events and promote the reduction of risk for those events.

- c) The Department will publish an annual report to increase general knowledge about adverse health care events, their causes, and strategies for prevention. This report will be made available to the public.

Section 235.170 Enforcement

- a) A health care facility that fails to comply with the requirements of the Act and this Part shall be subject to enforcement action by the Department.
- b) *After notice and opportunity for a hearing, the Department may deny, suspend, or revoke a license to open, conduct, operate, and maintain a hospital in any case in which the Department finds that there has been a substantial failure to comply with the provisions of the Act or this Part. (Section 7(a) of the Hospital Licensing Act)*
- c) *When the Department determines that an ambulatory surgical treatment center has failed to comply with the Act or this Part, the Department may issue a notice of fine assessment which shall specify the violations for which the fine is assessed. (Section 10(d) of the Ambulatory Surgical Treatment Center Act) Fines will be assessed in accordance with Section 10(d) of the Ambulatory Surgical Treatment Center Act. The Department will provide notice and opportunity for hearing to the ambulatory surgical treatment center.*
- d) Hearings shall be conducted in accordance with the Department's Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100).

Section 235.180 Confidentiality

Other than the annual report required under paragraph (4) of Section 10-35 of the Act, adverse health care event reports, findings of root cause analyses, and corrective action plans filed by a health care facility under the Act and records created or obtained by the Department in reviewing or investigating these reports, findings, and plans shall not be available to the public and shall not be discoverable or admissible in any civil, criminal, or administrative proceeding against a health care facility or health care professional. No report or Department disclosure under the Act or this Part may contain information identifying a patient, employee, or licensed professional. Notwithstanding any other provision of law, under no circumstances shall the

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Department disclose information obtained from a health care facility that is confidential under Part 21 of Article VIII of the Code of Civil Procedure. (Section 10-25 of the Act)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
130.310	Amendment
130.502	Amendment
130.510	Amendment
130.ILLUSTRATION C	New Section
- 4) Statutory Authority: 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) Effective Date of Amendments: October 27, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 33 Ill. Reg. 9252; July 6, 2009; 33 Ill. Reg. 11230; July 31, 2009
- 10) Has JCAR issued a Statement of Objection to these Amendments? No
- 11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.

This is a consolidated rulemaking with 4 sections being amended or added that were originally proposed in 2 separate rulemakings. See #9 above.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency amendments currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

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NOTICE OF ADOPTED AMENDMENTS

<u>Section Number:</u> 130.1954	<u>Proposed Action:</u> Amendment	<u>Illinois Register Citation:</u> 33 Ill. Reg. 11921; August 21, 2009
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- 15) Summary and Purpose of Amendments: Section 130.310 and 130.ILLUSTRATION C: This rulemaking amends provisions in Section 130.310 that govern the taxation of food. The regulation has been revamped and examples included to provide greater guidance regarding the tests used to determine whether food items are taxed at the high or low rate. In addition, the draft clarifies several issues related to the definition of "food prepared for immediate consumption." Grocers have frequently sought guidance regarding the taxation of items which they prepare on-site and sell in single size servings, such as doughnuts, bagels, breads, sandwiches and pies. The regulation addresses the taxation of these items. In addition, the grocery industry has changed radically since this rule was originally promulgated. Although grocers still primarily market food for consumption off the premises (low rate food), they now sell many food products that directly compete with food sold by restaurants, in particular fast food establishments and delis -- establishments that are taxed at the high rate. Given these developments, the need to reexamine the meaning of "food prepared for immediate consumption" has become apparent, so that such items are taxed consistently across all types of establishments. In addition to the regulation, a flow chart has also been developed for use in ascertaining either the high or low rate of tax.

Sections 130.502 and 130.510: These regulations amend Sections 130.502 and 130.510, which govern, respectively, quarterly and annual tax filing procedures and restrictions. Currently, these regulations each provide that a taxpayer must file monthly returns for a period of one year before the Department will authorize him to switch to quarterly or annual filing status. It has been the Department's experience, however, that it is able to determine the filing frequency appropriate for a taxpayer from other information, such as registration or audit information. As a result, it is not necessary for taxpayers to file monthly returns for one year before being authorized to switch to a less frequent filing status. The Department is amending these regulations to remove language requiring a taxpayer to file monthly for one year before being switched to a less frequent filing status. Instead, the proposed regulations state that the Department will base a taxpayer's filing status upon information that is available to it, including information from the registration process, or from audit. The regulations also provide that the Department shall periodically review taxpayer information to determine if changes have occurred that require the taxpayer to switch his or her filing status. In case the Department determines a change is necessary, the rules provide that it shall notify the taxpayer of its determination.

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

Jerilynn T. Gorden

Deputy General Counsel – Sales & Excise Taxes

Legal Services Office

Illinois Department of Revenue

101 West Jefferson

Springfield, Illinois 62794

217/782-2844

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

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 130

RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section

130.101	Character and Rate of Tax
130.105	Responsibility of Trustees, Receivers, Executors or Administrators
130.110	Occasional Sales
130.111	Sale of Used Motor Vehicles, Aircraft, or Watercraft by Leasing or Rental Business
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130.ILLUSTRATION A Examples of Tax Exemption Card

130.ILLUSTRATION B Example of Notice of Revocation of Certificate of Registration

130.ILLUSTRATION C Food Flow Chart

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-25].

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138,

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effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950, effective March 19, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25 Ill. Reg. 6515, effective May 3, 2001; expedited correction at 25 Ill. Reg. 15681, effective May 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264, effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective August 13, 2001; amended at 25 Ill. Reg. 12841, effective October 1, 2001; amended at 26 Ill. Reg. 958, effective January 15, 2002; amended at 26 Ill. Reg. 1303, effective January 17, 2002; amended at 26 Ill. Reg. 3196, effective February 13, 2002; amended at 26 Ill. Reg. 5369, effective April 1, 2002; amended at 26 Ill. Reg. 5946, effective April 15, 2002; amended at 26 Ill. Reg. 8423, effective May 24, 2002; amended at 26 Ill. Reg. 9885, effective June 24, 2002; amended at 27 Ill. Reg. 795,

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effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11099, effective July 7, 2003, for a maximum of 150 days; emergency expired December 3, 2003; amended at 27 Ill. Reg. 17216, effective November 3, 2003; emergency amendment at 27 Ill. Reg. 18911, effective November 26, 2003, for a maximum of 150 days; emergency expired April 23, 2004; amended at 28 Ill. Reg. 9121, effective June 18, 2004; amended at 28 Ill. Reg. 11268, effective July 21, 2004; emergency amendment at 28 Ill. Reg. 15193, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7004, effective April 26, 2005; amended at 31 Ill. Reg. 3574, effective February 16, 2007; amended at 31 Ill. Reg. 5621, effective March 23, 2007; amended at 31 Ill. Reg. 13004, effective August 21, 2007; amended at 31 Ill. Reg. 14091, effective September 21, 2007; amended at 32 Ill. Reg. 4226, effective March 6, 2008; emergency amendment at 32 Ill. Reg. 8785, effective May 29, 2008, for a maximum of 150 days; emergency expired October 25, 2008; amended at 32 Ill. Reg. 10207, effective June 24, 2008; amended at 32 Ill. Reg. 17228, effective October 15, 2008; amended at 32 Ill. Reg. 17519, effective October 24, 2008; amended at 32 Ill. Reg. 19128, effective December 1, 2008; amended at 33 Ill. Reg. 1762, effective January 13, 2009; amended at 33 Ill. Reg. 2345, effective January 23, 2009; amended at 33 Ill. Reg. 3999, effective February 23, 2009; amended at 33 Ill. Reg. 15781, effective October 27, 2009.

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section 130.310 Food, Drugs, Medicines and Medical Appliances

- a) FoodGeneral. *With respect to food for human consumption ~~thatwhich~~ is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, candy and food ~~thatwhich~~ has been prepared for immediate consumption); and ~~prescription and non-prescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use,~~ the tax is imposed at the rate of 1%. Food for human consumption that is to be consumed off the premises where it is sold includes all food sold through a vending machine, except soft drinks, candy, and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine. (Section 2-10 of the Act) Public Acts 96-34, 96-37 and 96-38 included changes to the definition of soft drinks and provided that candy is not considered "food for human consumption that is to be consumed off the premises where it is sold". For further information on the definition and taxation of soft drinks, see subsection (d)(6). For further information regarding the definition and taxation of candy, see subsection (d)(7).*

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b) The manner in which food is taxed depends upon 2 distinct factors that must both be considered in determining if food is taxed at the high rate as "food prepared for immediate consumption" or the low rate as "food prepared for consumption off the premises where sold".

1) The first factor is whether the retailer selling the food provides premises for consumption of food. If so, a rebuttable presumption is created that all sales of food by that retailer are considered to be prepared for immediate consumption and subject to tax at the high rate. As a result of this presumption, even bulk food could potentially be taxable at the high rate. However, this presumption is rebutted if a retailer demonstrates that:

A) the area for on-premises consumption is physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold; and

B) the retailer has a separate means of recording and accounting for collection of receipts from sales of both high and low rate foods. For purposes of this subsection (b)(1)(B), the phrase "separate means of recording and accounting for collection of receipts" includes cash registers that separately identify high rate and low rate sales, separate cash registers, and any other methods by which the tax on high and low rate sales are recorded at the time of collection.

2) The second factor is the nature of the food item being sold. As provided in subsection (c), some foods, such as hot foods, are always considered to be "food prepared for immediate consumption", and thus subject to the high rate of tax.

3) Numerous examples applying these factors to different types of food and food retailers are provided in subsection (d)(4)(A)-(I).

cb) Definitions

1) "Food". ~~Food~~A food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice.

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- 2) "Food Prepared for Immediate Consumption". Food prepared for immediate consumption means food that is prepared or made ready by a retailer to be eaten without substantial delay after the final stage of preparation by the retailer.
- A) Food prepared for immediate consumption includes, but is not limited to, the following:
- i) all hot foods, whether sold in a restaurant, delicatessen, grocery store, discount store, concession stand, bowling alley, vending machine or any other location. At a grocery store, hot foods subject to the high rate of tax include, but are not limited to, pizza, soup, rotisserie or fried chicken and coffee; other examples of food prepared for immediate consumption include popcorn or nachos sold at a movie concession stand; hot dogs sold by a street vendor; and hot precooked meals sold to customers, such as a Thanksgiving dinner. For purposes of this Section, "hot" means any temperature that is greater than room temperature;
 - ii) sandwiches, either hot or cold, prepared by a retailer to the individual order of a customer;
 - iii) salad, olive or sushi bars offered by a retailer at which individuals prepare their own salads (hot or cold);
 - iv) all coffee, tea, cappuccino and other drinks prepared by a retailer for individual consumption, whether hot or cold, are subject to the high rate of tax;
 - v) all food sold for consumption on the premises where sold.
- B) "Food prepared for immediate consumption" does not include:
- i) doughnuts, cookies, bagels or other bakery items prepared by a retailer and sold either individually or in another quantity selected by the customer, provided they are for consumption off the premises where sold;

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- ii) whole breads, pies and cakes prepared by a retailer, even when prepared to the individual order of a customer;
 - iii) sandwiches that are prepared by a retailer and placed in a deli case or other storage unit;
 - iv) cold salads, jellos, stuffed vegetables or fruits sold by weight or by quart, pint or other quantity by a retailer;
 - v) cheese, fruit, vegetable or meat trays prepared by a retailer, either to the individual order of a customer or premade and set out for sale;
 - vi) food items sold by a retailer that are not prepared or otherwise manufactured by that retailer, such as pre-packaged snacks or chips, unless these items will be consumed on the premises where sold (e.g., in a sandwich shop). For grocers, such items include, but are not limited to, fruits, vegetables, meats, milk, canned goods and yogurt. In addition, effective September 1, 2009, all sales of "candy", as defined in subsection (d)(7), are subject to the high rate of tax.
- C) The provisions of subsection (c)(2)(B) are subject to the rebuttable presumption described in subsection (d). That is, the items listed in subsection (c)(2)(B) are taxable at the low rate only if the retailer had a separate means of recording and accounting for high and low rate sales, and the retailer provides no on-premises facilities for consumption of the food or, if the retailer does provide such facilities, they are physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold.
- 3) "Premises". Premises is that area over which the retailer exercises control, whether by lease, contract, license or otherwise, and, in addition, the area in which facilities for eating are provided, including areas designated for, or devoted to, use in conjunction with the business engaged in by the vendor. Vendor premises include eating areas provided by employers for

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employees and common or shared eating areas in shopping centers or public buildings if customers of food vendors adjacent to those areas are permitted to use them for consumption of food products.

- d) Test to Determine Applicable Rate. The rate at which food is taxable is determined as follows:
- 1) If retailers provide seating or facilities for on-premises consumption of food, all food sales are presumed to be taxable at the high rate as "food prepared for immediate consumption". However, this presumption can be rebutted by evidence that:
 - A) the area for on-premises consumption is physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold; and
 - B) the retailer utilizes a means of recording and accounting for collection of receipts from the sales of food prepared for immediate consumption (high rate) and the sales of food that are not prepared for immediate consumption (low rate).
 - 2) If a retailer does not provide seating or facilities for on-premises consumption of food, then the low rate of tax will be applied to all food items except for "food prepared for immediate consumption by the retailer" as provided in subsection (b) and soft drinks, candy and alcoholic beverages. However, in order for the low rate of tax to apply, retailers that sell both food prepared for immediate consumption and food for consumption off the premises where sold must utilize means of recording and accounting for collection of receipts from the sales of food prepared for immediate consumption (high rate) and the sales of food that are not prepared for immediate consumption (low rate). If these receipts are not maintained, all sales will be presumed to be at the high rate of tax.
 - 3) Illustration C is a decision tree to assist in making high rate/low rate determinations.
 - 4) Examples:

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- A) Grocery Store – On-premises Facilities for Consumption of Food. Provided that the requirements of subsection (d)(1) are met, examples of high rate items include, but are not limited to, hot foods (soup, pizza, rotisserie or fried chicken, stuffed potatoes, hot dogs); all sandwiches, either hot or cold, that are prepared to the individual order of a customer; salads prepared by customers at a salad/olive/sushi bar; and all food sold for consumption on the premises. Also included are hot precooked meals sold to customers, such as a Thanksgiving dinner; however, if precooked meals are sold in an unheated state of preparation, they are considered to be low rate. Meal packages sold by a grocer (e.g., 2 or more pieces of fried chicken with choice of two sides and dinner rolls sold at one price) that include at least 1 hot food item are taxable at the high rate, even if some foods in the package, sold alone, would be taxable at the low rate. Low rate items would include, but are not limited to, doughnuts (regardless of quantity), bagels, rolls and whole breads or bakery items prepared by the retailer; sandwiches that are premade by the retailer and set out for sale to customers; cold pizzas prepared by the retailer and set out for sale to customers; stuffed olives or peppers prepared by the retailer and set out for sale in individual sized containers; and deli items sold by the retailer to customers by size or weight (prepared salads, e.g., potato, pasta, bean or fruit salads; jello; pudding; stuffed olives).
- B) Grocery Store – No On-premises Facilities for Consumption of Food. Provided that the requirements of subsection (d)(2) are met, examples of high rate items would include, but are not limited to, hot foods (soup, pizza, rotisserie or fried chicken, hot dogs); all sandwiches, either hot or cold, that are prepared to the individual order of a customer; **and** salads that are made by customers at a salad/olive/sushi bar. Also included are hot precooked meals sold to customers, such as a Thanksgiving dinner. If precooked meals are sold in an unheated state of preparation, however, they are considered to be low rate. Low rate items would include, but are not limited to, doughnuts (regardless of quantity), bagels, rolls and whole breads or bakery items prepared by the retailer; sandwiches that are premade by the retailer and set out for sale to customers; cold pizzas prepared by the retailer and set out for sale to

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customers; stuffed olives or peppers prepared by the retailer and set out for sale in individual sized containers; and deli items sold by the retailer to customers by size or weight.

- C) Restaurants and Cafeterias. All foods sold by a restaurant or a cafeteria are considered food prepared for immediate consumption. Such food can either be prepared to the individual order of a customer or premade and set out for selection by the customer. However, if a restaurant or cafeteria also sells whole pies, cakes or individual pastries for sale, these items are taxable at the low rate, as long as the requirements of subsection (d)(1) are met.
- D) Bakery. Provided that the requirements of either subsection (d)(1) or (d)(2) are met, the following items are taxable at the low rate: doughnuts, cookies or individual pastries, regardless of quantity, sold for consumption off the premises where sold, and whole cakes or pies, such as wedding or special occasion cakes. Food sold for consumption on the premises, such as doughnuts and coffee, are subject to the high rate of tax.
- E) Delicatessen. Provided that the requirements of either subsection (d)(1) or (d)(2) are met, meat, cheese and prepared salads sold by weight or volume are taxable at the low rate. Individual sandwiches prepared to the individual order of a customer are high rate, as well as other food sold for consumption on the premises.
- F) Ice Cream Store. Ice cream items in individual sizes, either prepared to the individual order of a customer or premade and offered for sale by a retailer, constitute "food prepared for immediate consumption" and are subject to the high rate of tax. These items include ice cream cones, cups of ice cream, sundaes, shakes and premade ice cream sandwiches, bars or cookies. However, provided that the requirements of either subsection (d)(1) or (d)(2) are met, ice cream cakes or rolls or ice cream packaged in premeasured containers, such as a pint, quart or gallon, are subject to tax at the low rate.
- G) Food Sold at Food Courts. All hot food and food prepared to the individual order of a customer by a retailer at a food court is

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subject to the high rate of tax. In addition, all other food sold for consumption on the premises of a food court is subject to the high rate of tax.

H) Convenience Stores. Provided that the requirements of either subsection (d)(1) or (d)(2) are met, prepackaged food items not prepared by a convenience store retailer are subject to the low rate of tax. These items include, but are not limited to, chips, snacks, bread products and cookies. The sale of hot food items, such as hot dogs, nachos or pretzels, are subject to the high rate of tax, as well as other food sold for consumption on the premises. In addition, effective September 1, 2009, all sales of "candy", as defined in subsection (d)(7), are subject to the high rate of tax.

I) Coffee Shops. Provided that the requirements of either subsection (d)(1) or (d)(2) are met, coffee, latte, cappuccino and tea (prepared either hot or cold) and food sold for consumption on the premises (e.g., pastries, cookies, snacks) are subject to the high rate of tax. Bulk coffees (beans or grounds, for instance) and teas, or pastries that are not consumed on the premises, are subject to the low rate of tax.

~~2) Gross receipts from sales of food for which facilities are provided so that it can be consumed on the premises where it is sold and gross receipts from sales of food that has been prepared for immediate consumption do not qualify for the reduced rate. For example:~~

~~A) gross receipts from sales of food and drinks by restaurants, coffee shops, cafeterias and other establishments selling food that has been prepared for immediate consumption or that provide facilities for on-premises consumption are subject to the full rate of tax.~~

~~B) concession stands, snack shops and other establishments that sell food items primarily (more than 50%) in individual sized servings (such as ice cream cones, bags of popcorn, and individually served sandwiches) make sales of food for immediate consumption.~~

~~C) sales of all hot food and hot food products are sales of food for immediate consumption.~~

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- 3) ~~Delicatessens, markets, dairies and bakeries and other establishments that sell food items primarily (more than 50%) in quantities greater than individual sized servings incur the reduced rate on gross receipts from retail sales of food items. However, the full rate will apply to all sales made by such establishments that provide facilities for the consumption of food on premises unless those facilities utilize a separate means of recording and accounting for collection of receipts from sales for consumption on the premises and are physically partitioned from areas in which food not for immediate consumption is sold. The phrase "separate means of recording and accounting for collection of receipts" includes cash registers that separately identify high rate and low rate sales, separate cash registers, and other methods by which the tax on high rate and low rate sales are recorded at the time of collection.~~
- 54) The reduced rate does not extend to alcoholic beverages. An alcoholic beverage is any beverage subject to the tax imposed under Article VIII of the Liquor Control Act of 1934 [235 ILCS 5/Art. VIII].
- 65) The reduced rate does not extend to soft drinks. Soft drinks will be taxed at the State sales tax rate of 6.25%. *The term "soft drinks" means any*
- A) Until September 1, 2009, the term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products as defined in Section 3(a)(2) and (4) of the Grade A Pasteurized Milk and Milk Products Act [410 ILCS 635], or drinks containing 50% or more natural fruit or vegetable juice. (Section 2-10 of the Act) Frozen concentrated fruit juice, dry powdered drink mixes, and fruit juices that are reconstituted to natural strength are not soft drinks.
- B) On and after September 1, 2009, the term "soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners.

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"Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume. (Section 2-10 of the Act)

- 7) *On and after September 1, 2009, the reduced rate does not extend to "candy". Candy will be taxed at the state sales tax rate of 6.25%. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation that contains flour or requires refrigeration. (Section 2-10 of the Act)*
- 6) ~~Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. Retailers who sell food they do not prepare in any way, are not selling food for immediate consumption, i.e., pre-packaged candy bars, snacks, chips, ice cream, unless that food is to be consumed on the retailer's premises. It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer of individual sandwiches, doughnuts or cookies prepared in the morning will be subject to the high rate of tax regardless of when during a business day those items are sold and actually consumed. "Premises" are that area over which the vendor exercises control, whether by lease, contract, license or otherwise, and, in addition, the area in which facilities for eating are provided, including areas designated for, or devoted to, use in conjunction with the business engaged in by the vendor. Thus, all food sold by a restaurant for consumption on premises, whether prepared for immediate consumption or not, is subject to the high rate. Vendor premises would include eating areas provided by employers for employees, common or shared eating areas in shopping centers or public buildings if customers of food vendors adjacent to such areas are permitted to use them for consumption of food products. It will be presumed that food sold by vendors with on-premises consumption facilities will, in fact, be consumed on premises unless the vendor presents evidence to the contrary from its books and records.~~
- 7) ~~For purposes of this Section, effective June 1, 1996, food for human consumption that is to be consumed off the premises where it is sold~~

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~~(Section 2-10 of the Act) includes all food sold through a vending machine, except soft drinks and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine. For example, a candy bar sold through a vending machine is subject to the low rate of tax regardless of whether on-premises facilities for consumption are provided at that location.~~

~~ee) Prescription and non-prescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person, and insulin, urine testing utensils, syringes and needles used by diabetics. With respect to prescription and non-prescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person, and insulin, urine testing utensils, syringes and needles used by diabetics, for human use, the tax is imposed at the rate of 1%. Medicines and Medical Appliances~~

1) A medicine or drug is any pill, powder, potion, salve, or other preparation for human use that purports on the label to have medicinal qualities. Medicines prescribed by veterinarians for animals are subject to the high rate of tax. A written claim on the label that a product is intended to cure or treat disease, illness, injury or pain, or to mitigate the symptoms of ~~such~~ disease, illness, injury or pain, constitutes a medicinal claim.

A) Examples of medicinal claims that will qualify the product for the low rate of tax include, but are not limited to:

- i) "medicated";
- ii) "heals (a medical condition)";
- iii) "cures (a medical condition)";
- iv) "for relief (of a medical condition)";
- v) "fights infection";
- vi) "stops pain";
- vii) "relief from poison ivy or poison oak";

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- viii) "relieves itching, cracking, burning";
- ix) "a soaking aid for sprains and bruises";
- x) "relieves muscular aches and pains";
- xi) "cures athlete's foot";
- xii) "relieves skin irritation, chafing, heat rash and diaper rash";
- xiii) "relief from the pain of sunburn";
- xiv) "soothes pain".

- B) The use of the terms "antiseptic," "antibacterial" or "kills germs" may or may not constitute a medicinal claim.
 - i) The use of these terms in conjunction with a claim that the product kills germs in general does not constitute a medicinal claim.
 - ii) However, a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions and burns does constitute a medicinal claim.
- C) Examples of claims that do not constitute medicinal claims include, but are not limited to:
 - i) "cools";
 - ii) "absorbs wetness that can breed fungus";
 - iii) "deodorant, or destroys odors";
 - iv) "moisturizes";
 - v) "freshens breath";

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- vi) "antiperspirant";
 - vii) "sunscreen";
 - viii) "prevents";
 - ix) "protects".
- D) All lip balms qualify for the reduced rate of tax because the word "balm" is defined as a healing ointment or a preparation that relieves pain.
- 2) A medical appliance is an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the human body. These items may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients, or purchased directly by individuals. Purchases of medical appliances by lessors that will be leased to others for human use also qualify for the exemption. Included in the exemption as medical appliances are such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines (including the dialyzer). Corrective medical appliances such as hearing aids, eyeglasses and contact lenses qualify for exemption. Diagnostic equipment shall not be deemed to be a medical appliance, except as provided in Section 130.310(d). Other medical tools, devices and equipment such as x-ray machines, laboratory equipment, and surgical instruments that may be used in the treatment of patients but that do not directly substitute for a malfunctioning part of the human body do not qualify as exempt medical appliances. Sometimes a kit of items is sold so the purchaser can use the kit items to perform treatment upon himself or herself. The kit will contain paraphernalia and sometimes medicines. An example is a kit sold for the removal of ear wax. Because the paraphernalia hardware is for treatment, it generally does not qualify as a medical appliance. However, the Department will consider the selling price of the entire kit to be taxable at the reduced rate when the value of the medicines in the kit is more than half of the total selling price of the kit.
- 3) Supplies, such as non-sterile cotton swabs, disposable diapers, toilet paper,

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tissues, towelettes, and cosmetics such as lipsticks, perfume and hair tonics do not qualify for the reduced rate. Sterile dressings, bandages and gauze do qualify for the reduced rate. Diapers for incontinent adults, as well as undergarments for incontinent adults, qualify for the low rate of tax.

- d) *Insulin, urine testing materials, syringes, and needles used in treating diabetes in human beings qualify for the reduced rate of tax.* (Section 2-10 of the Act)
- e) Modifications Made to a Motor Vehicle for the Purpose of Rendering it Usable by a Disabled Person
 - 1) Effective August 17, 1995, *modifications made to a motor vehicle*, as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146], *for the purpose of rendering it usable by a disabled person*, qualify for the reduced rate of tax (Section 2-10 of the Act). The low rate applies to modifications that enable a disabled person to drive a vehicle, or that assist in the transportation of disabled persons. Examples of such modifications include, but are not limited to, special steering, braking, shifting, or acceleration equipment, or equipment that modifies the vehicle for accessibility, such as a chair lift.
 - 2) For purposes of this regulation, the term "disabled person" has the same meaning as a "person with disabilities" in Section 1-159.1 of the Illinois Vehicle Code [625 ILCS 5/1-159.1].
- f) Reporting
 - 1) The retailer must keep an actual record of all sales and must report tax at the applicable rates, based on sales as reflected in the retailer's records. Books and records must be maintained in sufficient detail so that all receipts reported with respect to food, drugs, medicines and medical appliances can be supported. The determination of the percentage of sales of food items sold in individual-sized servings referred to in subsections (b)(2)(B) and (b)(3), will be made by comparing the dollar amounts of the gross receipts of the two categories of foods. The determination shall be based upon a period that will generally reflect the true character of overall sales rather than isolated or seasonal variations.

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- 2) A retailer who finds it difficult to maintain detailed records of receipts from sales of food, drugs, medicines and medical appliances at the reduced rate, as well as detailed records of receipts from all other sales of tangible personal property at the full rate, may request the use of a formula. The request must be made to the Department in writing, must state the reasons that a formula method is necessary, and must outline the proposed formula in detail. Included in the request must be a description of how the method can be audited by the Department. Upon findings that the formula can be audited and will produce results that will reasonably approximate the actual taxable receipts in each category, the Department may issue its approval for use of the formula. If approval is granted, the Department reserves the right to withdraw approval or require a change in procedure at any time.

(Source: Amended at 33 Ill. Reg. 15781, effective October 27, 2009)

SUBPART E: RETURNS

Section 130.502 Quarterly Tax Returns

- a) If ~~at the retailer is otherwise required to file a monthly return and if the~~ retailer's average monthly tax liability to the Department does not exceed \$200.00, the Department may authorize ~~his~~ returns to be filed on a quarter-annual basis, with the return for January, February and March of a given year being due by April 20 of such year; with the return for April, May and June of a given year being due by July 20 of such year; with the return for July, August and September of a given year being due by October 20 of such year, and with the return for October, November and December of a given year being due by January 20 of the following year.
- b) The decision to permit quarterly filing will be based on information obtained by the Department, including, but not limited to, registration and audit information regarding the retailer's~~the taxpayer's~~ average monthly liability ~~during the first year of registration~~. The Department shall periodically review taxpayer information, including returns filed by the taxpayer, to determine if any changes have occurred that require the taxpayer to file returns on other than a quarterly basis. If the Department determines that a change is required in filing frequency, it shall notify the taxpayer of its determination.~~All taxpayers are required to file monthly returns unless authorized or required to file on a quarterly or annual basis.~~

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- c) ~~Quarterly~~~~Such quarterly~~ returns, as to form and substance, shall be subject to the same requirements as monthly returns.

(Source: Amended at 33 Ill. Reg. 15781, effective October 27, 2009)

Section 130.510 Annual Tax Returns

- a) If ~~at~~the retailer's average monthly tax liability to the Department does not exceed \$50.00, the Department may authorize ~~his~~ returns to be filed on an annual basis, with the return for a given year being due by January 20 of the following year. The decision to permit annual filing will be based upon information obtained by the Department, including, but not limited to, registration and audit information regarding the retailer's~~the taxpayer's~~ average monthly liability ~~during the first year of registration, or the first quarter of registration if the average monthly liability is less than \$12.00. All taxpayers are required to file monthly returns unless authorized or required to file on a quarterly or an annual basis.~~
- b) The Department shall periodically review taxpayer information, including returns filed by the taxpayer, to determine if any changes have occurred that require the taxpayer to file returns on other than an annual basis. If the Department determines that a change is required in filing frequency, it shall notify the taxpayer of its determination~~Such annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.~~
- c) Annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

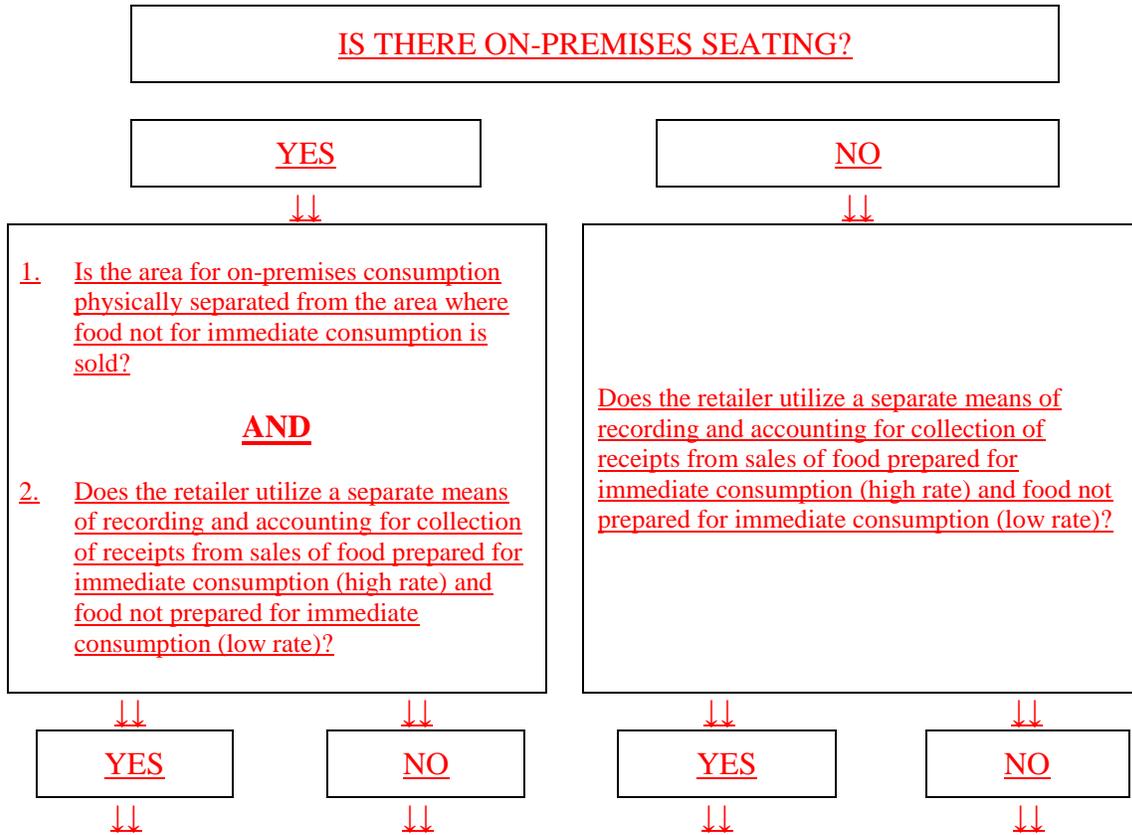
(Source: Amended at 33 Ill. Reg. 15781, effective October 27, 2009)

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Section 130.ILLUSTRATION C Food Flow Chart

TEST TO DETERMINE TAX RATE FOR FOOD ITEMS SOLD BY A RETAILER
(EXCLUDING RESTAURANTS AND CAFETERIAS)



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Only hot foods, soft drinks, candy, alcoholic beverages and food prepared by the retailer for immediate consumption are subject to HIGH RATE.

Grocery type food subject to LOW RATE

All items sold in the store are subject to tax at the HIGH RATE, even food not prepared for immediate consumption (grocery type food)

ALL items sold in the store are LOW RATE. HOWEVER, THE HIGH RATE APPLIES TO:
- hot food
- alcohol
- candy
- soft drinks and
- other food prepared by the retailer for immediate consumption

If the retailer sells both food prepared for immediate consumption and grocery type food, ALL food is HIGH RATE (rebuttable presumption).

If the retailer sells only grocery type foods, all food is LOW RATE other than soft drinks, alcoholic beverages and candy.

(Source: Added at 33 Ill. Reg. 15781, effective October 27, 2009)

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- 1) Heading of the Part: Commercial Driver Training Schools
- 2) Code Citation: 92 Ill. Adm. Code 1060
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
1060.5	Amendment
1060.20	Amendment
1060.60	Amendment
1060.120	Amendment
1060.160	Amendment
1060.180	Amendment
1060.200	Amendment
- 4) Statutory Authority: 65 ILCS 5/6-419; 625 ILCS 5/2-104
- 5) Effective Date of Amendments: October 27, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 33 Ill. Reg. 9560; July 10, 2009
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: Technical, non-substantive changes were made as suggested by JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No

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- 15) Summary of Purpose of Amendments: This rulemaking amends the following: Good moral character and motorcycle provisions; record requirements; solicitation restrictions; teenage accredited school requirements; enrollment requirements; and CDL accredited school recordkeeping requirements.
- 16) Information and questions regarding this adopted rulemaking shall be directed to:

Arlene J. Pulley
Office of the Secretary of State
Driver Services Department
2701 South Dirksen Parkway
Springfield, Illinois 62723

217/557-4462

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

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TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATEPART 1060
COMMERCIAL DRIVER TRAINING SCHOOLS

Section	
1060.5	Definitions
1060.10	Unlicensed Person May Not Operate Driver Training School
1060.20	Requirements for School Licenses
1060.30	Driver Training School Names
1060.40	Refund of Application Fees
1060.50	School Locations and Facilities
1060.60	Driver Training School Student Instruction Record
1060.70	Driver Training School Course of Instruction
1060.80	Driver Training School Contracts
1060.90	Inspection of School Facilities
1060.100	Licenses
1060.110	Safety Inspection of Driver Training School Motor Vehicles
1060.120	Requirements to Obtain and Retain a Driver Training Instructor's License
1060.130	Examination for Driver Training Instructor
1060.140	Temporary Permit
1060.150	Driver Training School Responsibility for Employees
1060.160	Solicitation of Students and Pupils for Commercial Driver Training Instruction
1060.170	Hearings
1060.180	Teen Accreditation
1060.190	Denial, Cancellation, Suspension, and Revocation of Commercial Driver Training School's License, Teen Accreditation, CDL Accreditation, and Instructor's License
1060.200	Commercial Driver's License and/or Endorsement and/or Accreditation
1060.210	Driver Training School Responsibility for Employees (Recodified)
1060.220	Solicitation of Students and Pupils for Commercial Driver Training Instruction (Recodified)
1060.230	Hearings (Recodified)
1060.240	Teen Accreditation (Recodified)
1060.250	Denial, Cancellation, Suspension, and Revocation of Commercial Driver Training School's License and Instructor's License (Recodified)
1060.260	Commercial Driver's License and/or Endorsement and/or Restriction Accreditation (Recodified)

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AUTHORITY: Implementing Article IV of the Illinois Driver Licensing Law of the Illinois Motor Vehicle Code [625 ILCS 5/Ch. 6, Art. IV] and authorized by Section 2-104(b) of the Illinois Title and Registration Law of the Illinois Vehicle Code [625 ILCS 5/2-104(b)].

SOURCE: Filed March 2, 1972; codified at 6 Ill. Reg. 12697; transferred from 23 Ill. Adm. Code 252.50 (State Board of Education) pursuant to Section 5-80(d) of the Illinois Administrative Procedure Act [5 ILCS 100/5-80(d)] and Section 6-411 of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/6-411] at 11 Ill. Reg. 1631, effective December 31, 1986; amended at 11 Ill. Reg. 17244, effective October 13, 1987; amended at 12 Ill. Reg. 13203, effective August 1, 1988; amended at 12 Ill. Reg. 19756, effective November 15, 1988; amended at 14 Ill. Reg. 8658, effective May 18, 1990; recodified at 17 Ill. Reg. 20006, effective November 3, 1993; amended at 18 Ill. Reg. 7788, effective May 9, 1994; amended at 20 Ill. Reg. 3861, effective February 14, 1996; amended at 22 Ill. Reg. 22069, effective December 2, 1998; emergency amendment at 24 Ill. Reg. 8403, effective June 2, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15443, effective October 5, 2000; amended at 25 Ill. Reg. 6409, effective April 26, 2001; amended at 26 Ill. Reg. 15020, effective October 1, 2002; emergency amendment at 28 Ill. Reg. 398, effective December 22, 2003, for a maximum of 150 days; emergency expired May 19, 2004; amended at 28 Ill. Reg. 11925, effective July 26, 2004; amended at 30 Ill. Reg. 11377, effective June 14, 2006; amended at 31 Ill. Reg. 16008, effective November 16, 2007; amended at 33 Ill. Reg. 15811, effective October 27, 2009.

Section 1060.5 Definitions

For purposes of this Part, the following definitions shall apply:

"Administrator" – any individual who is employed by or acts on behalf of a high school who administers a ~~State~~ approved high school driver education program.

"Branch Office" – an office of a ~~commercial driver training school~~ ~~Commercial Driver Training School~~ in a distinct location from the main office, but ~~that~~ ~~which~~ conducts business under the name and as a part of the school as provided in ~~IVC Article IV~~ ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code~~ ~~[625 ILCS 5/6, Art. IV]~~ and ~~that~~ ~~which~~ meets the requirements of Section 1060.50 ~~of this Part~~.

"Business Day" – any day ~~that~~ ~~on~~ ~~which~~ the Office of the Secretary of State Commercial Driver School Division is open, ~~i.e.,~~ Monday through Saturday,

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excluding State holidays.

"Cancellation" – the without prejudice annulment or termination by formal action of the Secretary of a driver training school's license or a driver training school instructor's license because of some error or defect in the license or because the licensee is in some form of violation of any of the requirements in the Illinois Vehicle Code or Illinois Administrative Code. ~~The, which~~ annulment or termination shall not be subject to renewal or restoration, except that an application for a new license shall be presented and acted upon by the Secretary after the licensee demonstrates compliance with the provisions of this Part for which the cancellation was issued.

"CDL Accreditation" – the accreditation of a commercial driver training school by the Department ~~that, which~~ allows the school to offer instruction to students who wish to obtain a CDL and/or endorsement.

"CDL Study Guide" – a study guide, compiled by the Secretary of State from information contained in the Illinois Vehicle Code ~~[625 ILCS 5]~~ and 49 CFR 383, ~~thatwhich~~ is designed to aid drivers in preparing for a CDL examination.

~~*"Commercial Driver's License" or "CDL" – a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR 383 (2008; this incorporation includes no later amendments or editions), to an individual, which authorizes the individual to operate a certain class of commercial motor vehicle as defined in IVC Section 1-111.6. "Commercial Driver's License" or "CDL" – a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR 383 (2006, no later amendments or editions included), to an individual which authorizes the individual to operate a class of a commercial motor vehicle.*~~

"Commercial Driver Training School" – an entity licensed by the Secretary of State to engage in the business of giving instruction for a fee in the driving of motor vehicles or in the preparation of an applicant for examination given by the Secretary of State for a driver's license or permit.

"Commercial Driver Training Section" – a unit of the Department of Driver Services ~~thatwhich~~ oversees the licensing of commercial driving schools and the instructors in commercial driver training schools.

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"Commercial Motor Vehicle" or "CMV" – a motor vehicle used in commerce, except those referred to in Section 6-500(6)(B) of the Illinois Vehicle Code, designed to transport passengers or property if:

the vehicle has a Gross Vehicle Weight Rating (GVWR) of 26,001 pounds or more or such a lesser GVWR as subsequently determined by federal regulations (49 CFR 383 (2008)); or

any combination of vehicles with a Gross Combination Weight Rating (GCWR) of 26,001 pounds or more, provided the GVWR of any vehicle or vehicles being towed is 10,001 pounds or more; or

the vehicle is designed to transport 16 more persons; or

the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR 172, subpart F (2008).~~"Commercial Motor Vehicle" – a vehicle as defined in Section 6-500 of the Illinois Driver Licensing Law of the Illinois Vehicle Code~~ [625 ILCS 5/6-500].

"Department" – Department of Driver Services within the Office of the Secretary of State.

"Endorsement" – an indication on the driver's license that the driver has qualified to operate certain types and/or combinations of vehicles, and/or carry specified cargo.

"Enhanced Instruction Report" – a report submitted on a form prescribed by the Department showing the name, address, and number of behind-the-wheel instruction periods taken for every student who has had 25 hours of behind-the-wheel instruction.

"Fraud" – includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence.

"Gross Vehicle Weight Rating" or "GVWR" – the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single vehicle. The GVWR of a combination of vehicles (commonly referred to as the

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~~*"Gross Combination Weight Rating" or "GCWR") is the GVWR of the power unit plus the GVWR of the towed unit or units. In the absence of a value specified by the manufacturer, GCWR is determined by adding the GVWR of the power unit and the total weight of the towed unit and any load on the unit. [625 ILCS 5/1-124.5] "Gross Vehicle Weight Rating" or "GVWR"—the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single vehicle. The GVWR of a combination of vehicles (commonly referred to as the "Gross Combination Weight Rating" or GCWR) is the GVWR of the power unit plus the GVWR of the towed unit or units. In the absence of a value specified by the manufacturer, GCWR is determined by adding the GVWR of the power unit and the total weight of the towed unit and any load on the unit.*~~

~~*"Hazardous Materials" – any material that has been designated as hazardous under 49 USC 5103 and is required to be placarded under subpart F of 49 CFR 172 (2008) or any quantity of a material listed as a select agent or toxin in 42 CFR 73 (2008). "Hazardous Materials"—substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce (49 USC 1802).*~~

~~*"Illinois Vehicle Code" or "Vehicle Code" or "IVC" – 625 ILCS 5.*~~

~~*"Instruction Record" – records kept by the instructor to reflect the number of hours a pupil in a commercial driver training school ~~Commercial Driver Training School~~ attends behind-the-wheel and classroom instruction as provided in IVC Section 6-418 ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/6-418].~~*~~

~~*"Main Office" – the primary office of the commercial driver training school ~~that~~ Commercial Driver Training School ~~which~~ is designed solely for conducting the business of the school as provided in Article IV of the Illinois Driver Licensing Law of the Illinois Vehicle Code.*~~

~~*"Misrepresentation" – a false statement of a substantive fact, or any conduct ~~that~~ which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.*~~

~~*"Physical Facilities" – the building and items ~~that~~ which constitute part of the building, including the telephone and the furniture.*~~

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"Questionnaires" – any and all written examinations and/or forms, including but not limited to the "Illinois Driver's License Written Examination Basic and Classification "D"" and "Identification of Signs, Shapes and Colors" forms.

"Restriction" – the notation on a driver's license or permit indicating requirements deemed applicable to the licensee by the Department to assure safe operation of a motor vehicle. ~~"Restriction" – requirement or condition added to a driver's license which must first be met by the license holder before he/she may legally operate a motor vehicle.~~

"Revocation" – the termination by formal action of the Secretary of a commercial driver training school's license or a commercial driver training school instructor's license. ~~The, which~~ termination shall be subject to renewal or restoration identical to the provisions for revocation of a driver's license as provided in IVC Section 1-176 ~~of the Illinois Vehicle Code [625 ILCS 5/1-176]~~.

"Sex and Drug Related Offenses" – offenses of criminal sexual assault [720 ILCS 5/12-13], aggravated criminal sexual assault [720 ILCS 5/12-14], criminal sexual abuse [720 ILCS 5/12-15], aggravated criminal sexual abuse [720 ILCS 5/12-16], juvenile pimping [720 ILCS 5/11-19.1], soliciting for a juvenile prostitute [720 ILCS 5/11-15.1], unauthorized manufacture or delivery of a controlled substance, ~~including which shall include~~ counterfeit drugs [720 ILCS 570/401], sale, delivery or exchange of instruments used for illegal drug use or abuse [720 ILCS 5/22-51], delivery of a controlled substance, ~~including which includes~~ counterfeit and look alike substances [720 ILCS 570/407], manufacture or delivery of cannabis [720 ILCS 550/5], delivery of cannabis [720 ILCS 550/7], the production of the cannabis plant [720 ILCS 550/8], illegal possession in a motor vehicle of any controlled substance or any cannabis [625 ILCS 5/6-206(a)(28)], the criminal transmission of HIV [720 ILCS 5/12-16.2], exploitation of a child [720 ILCS 5/11-19.2], controlled substance trafficking [720 ILCS 570/401.17], cannabis trafficking [720 ILCS 550/5.1], delivery of cannabis on school grounds [720 ILCS 550/5.2], calculated criminal cannabis conspiracy [720 ILCS 550/9], calculated criminal drug conspiracy [720 ILCS 570/405], and criminal drug conspiracy [720 ILCS 570/405.1].

"Short Review Course" – a course offered by commercial driver training schools ~~Commercial Driver Training Schools~~ to pupils who have previously held or currently hold a valid driver's license and ~~that which~~ does not meet the requirement of 6 hours of classroom instruction and 6 hours behind-the-wheel

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instruction.

"Surety Bond" – a written obligation whereby ~~another~~ person assumes liability for ~~another person's~~~~another's~~ debts or defaults of obligation.

"Suspension" – the procedures for temporary withdrawal of a commercial driver training school's license or commercial driver training school instructor's license identical to the provisions for the suspension of a driver's license as provided in ~~IVC Section 1-204 of the Illinois Vehicle Code [625 ILCS 5/1-204]~~.

"Teen Accreditation" – the accreditation of a ~~Commercial Driver Training School~~ commercial driver training school by the Department ~~that, which~~ allows the school to offer instruction to pupils under age 18.

(Source: Amended at 33 Ill. Reg. 15811, effective October 27, 2009)

Section 1060.20 Requirements for School Licenses

- a) The Secretary of State shall not issue, or shall deny, cancel, suspend or revoke, a driver training school license unless:
 - 1) The applicant has at least one motor vehicle owned or leased in the name of the driver training school or school owner indicated on the license, and registered by the Secretary of State Vehicle Services Department, that has been safety inspected and insurance certified as required in subsection (e) for use by the school for driver training purposes and driving instruction.
 - 2) The applicant has at least one person who is employed by or associated with the school, and who is licensed or qualified to be licensed by the Department as a driver training instructor for that school.
 - 3) The physical facilities meet the requirements of this Part.
 - 4) The applicant is of good moral character as required pursuant to IVC Section 6-402(a) ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/6-402(a)]~~. In making a determination of good moral character, the Department is not limited to, but ~~may shall~~ consider, the following:

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- A) Whether~~If~~ the ~~applicant~~~~owner~~ has been convicted of a felony or a misdemeanor. The Department shall consider:
- i) The relationship of any crime of which the ~~applicant~~~~person~~ has been convicted to the ability to operate a driver training school; ~~or~~
 - ~~ii) The opinions of the community members concerning the owner; or~~
 - ~~ii)iii) The length of time that has elapsed since the applicant's~~owner's~~ last criminal conviction;:-~~
 - iii) Whether the applicant successfully completed any sentence imposed with the convictions;
 - iv) Whether the applicant has multiple convictions for felony or misdemeanor offenses.
- B) If the ~~person~~~~owner~~ has been indicted, formally charged or otherwise charged with a felony or a misdemeanor, the license shall be either denied or cancelled.:-
- i) If the ~~person~~~~owner~~ whose commercial driver training school license has been denied or cancelled under this Part is adjudicated "guilty" by the court systems, the denial or cancellation previously entered on his/her record in accordance with Section 1060.190(b)~~-of this Part~~ shall stand. This action does not preclude further suspension and/or revocation of the commercial driver training school license under another Section of this Part or the Illinois Vehicle Code.
 - ii) If the ~~person~~~~owner~~ whose commercial driver training school license has been denied or cancelled under this Part is adjudicated "not guilty" by the court systems, the denial or cancellation previously entered on the license in accordance with Section 1060.190(b)~~-of this Part~~ shall be rescinded. This action does not preclude further

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suspension and/or revocation of the commercial driver training school license under another Section of this Part or the Illinois Vehicle Code.

- iii) If the ~~personowner~~ whose commercial driver training school license has been denied or cancelled under this Part is granted a disposition of "court supervision" by the court systems, the denial or cancellation previously entered on the license in accordance with Section 1060.190(b) ~~of this Part~~ shall be rescinded. This action does not preclude further suspension and/or revocation of the commercial driver training school license under another Section of this Part or the Illinois Vehicle Code.
- 5) An individual whose commercial driver training school license has been denied, cancelled, suspended or revoked pursuant to this Part may request an administrative hearing pursuant to 92 Ill. Adm. Code 1001.
- b) Only one driver training school license shall be issued to any individual, group, association, partnership or corporation, and the Department shall deny the application of any driver training school if any of the applicants are unqualified or are already licensed or have made application for another driver training school license.
 - c) The applicant shall not be a current salaried or contractual employee of the Secretary of State, as mandated by the guidelines of the Secretary of State's Office policy manual that states that an employee shall not advocate or promote specific professional or commercial services to the public in matters under the jurisdiction of the Office of the Secretary of State.
 - d) No accreditation program shall remain in operation if properly qualified personnel are not available or if other changes occur that would reduce its qualifications. Exception: in the event of fire, flood or other catastrophe, the school may temporarily continue to operate with facilities that are not up to standards only for the duration of the courses that have been started, if the Director of the Department consents ~~for them to do so~~. A Secretary of State employee shall determine that no health or safety hazard exists in violation of any local ordinance or; State or federal law or regulation ~~ordinance~~ before the Director of the Department shall give ~~his/her~~ consent. No new course can be started until

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facilities meet the minimum requirements for licensing.

- e) No driver training school shall operate in the State of Illinois unless it provides and files with the Department a continuous surety bond in the principal sum of \$20,000, underwritten by a company authorized to do business in the State of Illinois, for the protection of the contractual rights of students as provided in IVC Section 6-402(e) ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code~~. All bonds filed pursuant to this provision shall be in substantially the following form:

Know All Persons by These Presents, That We, _____, of _____,

hereinafter referred to as Principal and _____, a corporation organized and existing to do business in the State of Illinois, for the use and benefit of all persons who may be damaged by breach of this bond, as Obligees, in the penal sum of ~~Twenty Thousand Dollars (\$20,000)~~, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our executors, administrators, successors and assigns, firmly by these presents. The ~~condition of this obligation is~~ Condition Of This Obligation Is such ~~that, That~~ whereas, the principal has made application for a license or permit to the State of Illinois for the purpose of exercising the vocation of a driver training school ~~Driver Training School~~. ~~If Now Therefore, if~~ the said Principal ~~shall~~ faithfully comply ~~comply~~ with the Illinois Vehicle Code, ~~as amended~~, and all rules and regulations ~~that~~ which have been or may hereafter be in force concerning the license or permits ~~said License or Permit~~, and shall save and keep harmless the Obligees from all loss or damage ~~that~~ which may be sustained as a result of the issuance of ~~the~~ said license or permit to the ~~said~~ Principal, this obligation shall be void; otherwise, this obligation shall ~~to~~ remain in full force and effect. The ~~bond will expire~~ Bond Will Expire but may be continued by renewal certificate signed by Principal and Surety. The Surety may at any time terminate its liability by giving 30 days written notice to the Commercial Driver Training Section of the Department, 650 Roppolo Drive, Elk Grove Village, Illinois 60007, and the Surety shall not be liable for any default after ~~that~~ such 30 day notice period, except for defaults occurring prior thereto.

Signed, Sealed and Dated this _____ day of _____, 20__.

Principal _____

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Surety _____

By _____
Attorney-in-fact

- f) Upon receipt of a properly executed application for a driver training school license, or driver training instructor's license, the Department shall investigate the qualifications of the applicant, and authorized representatives shall inspect the school property and equipment to determine whether the application should be granted or denied.
- g) An owner or manager shall not engage in fraudulent activity as defined in Section 1060.5 ~~of this Part~~.
- h) An owner or employee of a commercial driver training school shall not have been declared to have engaged in fraudulent activity within the 5 years prior to making application.
- i) Licenses shall be issued by the Department.
- j) An owner shall not have possession of questionnaires used by the Driver Services Department in conjunction with administering driver's license examinations. This includes questionnaires purposely or inadvertently obtained from any Secretary of State employee or any individual acting on behalf of the Secretary of State.
- k) An owner shall not knowingly use unlicensed instructors for the purpose of classroom or behind the wheel instruction.
- l) An owner shall not be currently employed as an administrator and/or teacher of a State-approved high school driver education program.
- m) An owner of a commercial driver training school that provides motorcycle instruction shall not provide any person with an Illinois Department of Transportation Rider Education Course Completion Card.

(Source: Amended at 33 Ill. Reg. 15811, effective October 27, 2009)

Section 1060.60 Driver Training School Student Instruction Record

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- a) All driver training schools licensed by the Department shall maintain a permanent record of instruction given to each student in accordance with IVC Section 6-408 ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code~~. If records of the driver training school are kept on a computer, a hard copy ~~must~~**MUST** be retained for inspection purposes.
- b) Each driver training school shall furnish the student a duplicate of his or her instruction record when the student completes all of the courses contracted for or otherwise ceases taking instruction at or with the school.
- c) The branch office must maintain a copy of the student's instruction record and any other student records required by the Department for a minimum period of ~~six (6)~~ months before transferring the records to the Main Office, where they shall be kept on file in accordance with IVC Section 6-408 ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code~~.
- d) Road tests at Secretary of State facilities conducted in a driver training school vehicle are considered a part of instruction, and documentation shall be maintained.
- e) Failure to maintain the required student instruction records, and/or the maintenance of incomplete records, shall be prima facie evidence that the required instruction was not administered.

(Source: Amended at 33 Ill. Reg. 15811, effective October 27, 2009)

Section 1060.120 Requirements to Obtain and Retain a Driver Training Instructor's License

- a) The Secretary of State shall not issue, or shall deny, cancel, suspend or revoke, a driver training instructor's license:
- 1) To any person who:
- A) has not held a valid driver's license for any 2 year period preceding the date of application for an instructor's license;
- B) intends to instruct in L and/or M classification, as defined in 92 Ill. Adm. Code 1030.30(b); and

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- C) has not held the representative classification for 3 consecutive years immediately prior to the date of application;
- 2) To any person who has been convicted of 3 or more offenses against traffic regulations governing the movement of traffic within the 2 year period immediately preceding the date of application for an instructor's license;
- 3) To any person who has had 2 or more convictions of a violation that caused an auto accident within the 2 year period immediately preceding the date of application for an instructor's license;
- 4) To any person who has been convicted of driving under the influence of alcohol and/or other drugs, pursuant to IVC Section 11-501 ~~of the Illinois Rules of the Road of the Illinois Vehicle Code [625 ILCS 5/11-501]~~, leaving the scene of a fatal accident, pursuant to IVC Section 11-401 ~~of the Illinois Rules of the Road of the Illinois Vehicle Code [625 ILCS 5/11-401]~~, reckless homicide, pursuant to Section 9-3 of the Criminal Code of 1961 [720 ILCS 5/9-3], reckless driving, pursuant to IVC Section 11-503 ~~of the Illinois Rules of the Road of the Illinois Vehicle Code [625 ILCS 5/11-503]~~, or any sex or drug related offense within 10 years prior to the date of application; or to any person with more than one of these convictions;
- 5) To any person who has failed to pass the written, vision, or road test required by the Department for applicants for a driver training instructor's license;
- 6) To any person who is physically unable to safely operate a motor vehicle or to safely instruct or train others in the operation of a motor vehicle as determined by a licensed physician pursuant to IVC Section 6-411(d) ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/6-411(d)]~~. An application/medical examination form provided by the Secretary of State shall be completed by the applicant and physician. The physician's medical examination form shall contain the applicant's ability to safely operate a motor vehicle. The form shall also contain an indication of the person's eyesight, hearing, mental alertness, reflexes, and whether the person has normal use of his/her limbs and feet. The

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physician must also provide his/her address and the date and place of the examination. Those persons who are solely classroom instructors shall comply with subsection (d) of this Section;

- 7) To any person who fails to properly and fully complete an application for a license or otherwise indicates that he/she is unqualified to receive a driver training instructor's license;
- 8) To any person who is not employed or associated with a driver training school licensed by the Department as required pursuant to IVC Section 6-417 ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/6-417]~~;
- 9) To any person who is currently a salaried or contractual employee of the Secretary of State, as mandated by the guidelines of the Secretary of State's Office ~~policy manual~~ Policy Manual that states that an employee shall not advocate or promote specific professional or commercial services to the public in matters under the jurisdiction of the Office of the Secretary of State;
- 10) To any person who fails to supply a complete set of fingerprints to the Department as required pursuant to IVC Section 6-411(b) ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/6-411(b)]~~;
- 11) To any person who is not at least 21 years of age and a resident of the State of Illinois;
- 12) To any person who has failed to comply with the provisions of this Part pursuant to IVC Section 6-411(d) ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/6-411(d)]~~;
- 13) To any person who is not of good moral character as required pursuant to IVC Section 6-411(a) ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/6-411(a)]~~. In making a determination of good moral character, the Department is not limited to, but ~~may~~ shall consider the following:
 - A) If the ~~person~~ instructor has been convicted of a felony or misdemeanor. The Department shall consider:

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- i) The relationship of any crime of which the person has been convicted to the ability to operate a driver training school;
~~or~~
 - ii) ~~The opinions of the community members concerning the owner; or~~
 - ~~ii)iii)~~ The length of time that has elapsed since the owner's last criminal conviction;
~~;~~
 - iii) Whether the applicant successfully completed any sentence imposed with the convictions;
 - iv) Whether the applicant has multiple convictions for felony or misdemeanor offenses.
- B) If the ~~personinstructor~~ has been indicted or; formally ~~charged~~ or otherwise charged with a felony or a misdemeanor, the license shall be either denied or cancelled.;
- i) If the ~~personinstructor~~ whose commercial driver training school instructor license has been denied or cancelled under this Part is adjudicated "guilty" by the court systems, the denial or cancellation previously entered on his/her record in accordance with Section 1060.190(b) ~~of this Part~~ shall stand. This action does not preclude further suspension and/or revocation of the commercial driver training school instructor license under another Section of this Part or the Illinois Vehicle Code.
 - ii) If the ~~personinstructor~~ whose commercial driver training school instructor license has been denied or cancelled under this Part is adjudicated "not guilty" by the court systems, the denial or cancellation previously entered on the license in accordance with Section 1060.190(b) ~~of this Part~~ shall be rescinded. This action does not preclude further suspension and/or revocation of the commercial driver training school instructor license under another Section of this Part or the

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Illinois Vehicle Code.

- iii) If the ~~person~~~~instructor~~ whose commercial driver training school instructor license has been ~~denied or~~ cancelled under this Part is granted a disposition of "court supervision" by the court systems, the ~~denial or~~ cancellation previously entered on the license in accordance with Section 1060.190(b) ~~of this Part~~ shall be rescinded. This action does not preclude further suspension and/or revocation of the commercial driver training school instructor license under another Section of this Part or the Illinois Vehicle Code~~;~~.
- 14) To any person whose suspension under IVC Section 11-501.1, 11-501.6 or 11-501.8 of the Illinois Rules of the Road of the Illinois Vehicle Code [625 ILCS 5/11-501.1] has terminated within 10 years prior to the date of application; or to any person with more than one of the above suspensions under IVC Section 11-501.1 or 11-501.6;
 - 15) To any person who has not completed a 30-hour course or an equivalent college or university course approved by the Director of the Department.
 - A) Any person possessing a current and valid commercial driver training instructor's license, or who is renewing a commercial driver training license issued by the Secretary of State's Office, shall be exempt from this requirement.
 - B) A driver training school whose instructor provides training to individuals under the age of 18 years is exempt from this requirement and must complete the mandatory 48 hour course as required in Section 1060.180 ~~of this Part~~;
 - 16) To any person currently licensed by the Secretary of State as a Third Party Certification Program Safety Officer;
 - 17) To any person who is currently an administrator and/or teacher of a State-approved high school driver education program.
- b) If an applicant indicates that he/she has been convicted of a felony, the applicant

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shall submit a signed release allowing the Department to obtain any information regarding the applicant's arrest and conviction, thereby enabling the Department to determine the fitness of an applicant to be licensed as an instructor.

- c) No driver training instructor shall provide behind-the-wheel instruction in a vehicle that is classified higher than the classification of the instructor's driver's license. An instructor may hold two classifications: one classification from Classes A, B, C and D, and one classification from Classes L and M, as defined in 92 Ill. Adm. Code 1030.30(b). An instructor holding a Class A commercial driver's license may teach students to drive all Class A, B, C, and D vehicles. An instructor holding a Class B commercial driver's license may teach students to drive all Class B, C, and D vehicles. An instructor holding a Class C commercial driver's license may teach students to drive all Class C and D vehicles. However, an instructor holding a non-commercial driver's license may only teach students who do not require a commercial driver's license. An instructor holding a Class M license may teach students to drive all Class L and M vehicles.
- d) Any person who is physically unable to safely operate a motor vehicle but meets all other requirements to be a driver training instructor shall be able to teach only the classroom portion of the driver training course upon receipt of a doctor's statement indicating the person is physically able to teach in the classroom. The person shall also pass the vision test, as provided in 92 Ill. Adm. Code 1030.70, the written test, as provided in 92 Ill. Adm. Code 1030.80, and the highway safety sign test, and shall submit all applicable fees as set out in IVC Section 6-411 ~~of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/6-411]~~ before being issued an instructor's license for classroom instruction only.
- e) All instructors who have ceased to be employed or associated with the designated school on their license must submit a new complete instructor's license application and application fee before being licensed to instruct at another school or in the same school after such cessation.
- f) If a driver training instructor license is not renewed within one year after the previous year's expiration date, the applicant shall be required to take examinations pursuant to Section 1060.130 ~~of this Part~~.
- g) An instructor shall not engage in fraudulent activity as defined in Section 1060.5 ~~of this Part~~.

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- h) During the course of instruction in either classroom or behind-the-wheel, an instructor shall not engage in activity unrelated to normal driving instruction that puts the student in danger.
- i) An instructor shall not have possession of questionnaires used by the Driver Services Department in conjunction with administering driver's license examinations. This includes questionnaires purposely or inadvertently obtained from any Secretary of State employee or any individual acting on behalf of the Secretary of State.
- j) An individual whose commercial driver training school instructor license has been cancelled pursuant to this Part may request an administrative hearing pursuant to 92 Ill. Adm. Code 1001.
- k) An instructor of a commercial driver training school that provides motorcycle instruction shall not provide any person with an Illinois Department of Transportation Rider Education Course Completion Card.

(Source: Amended at 33 Ill. Reg. 15811, effective October 27, 2009)

Section 1060.160 Solicitation of Students and Pupils for Commercial Driver Training Instruction

- a) A driver training school owner and/or instructor may not solicit or advertise for business within 1500 feet of any building used as an office by the Secretary of State having to do with the administration of any laws relating to motor vehicles.
- b) A driver training school owner and/or instructor may only advertise the use of training locations that are currently licensed.

(Source: Amended at 33 Ill. Reg. 15811, effective October 27, 2009)

Section 1060.180 Teen Accreditation

- a) Accreditation of the School – Each commercial driver training school that desires to offer instruction to those under the age of 18 must be accredited by the Secretary of State through the Department of Driver Services before ~~such~~ instruction can be offered or advertised.

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- 1) Upon receipt of proper application for accreditation, the Secretary of State will investigate the school and verify the application. A Secretary of State employee shall contact the school and make an appointment to visit the school's facilities. At the time of the visit, the Secretary of State employee shall verify that the school meets the standards set forth for commercial driving schools in IVC Section 6-401 ~~of the Illinois Vehicle Code [625 ILCS 5/6-401]~~. In addition, the school shall meet the standards for commercial driver school teen accreditation that are set forth in subsections Section 1060.180(b) through (f) ~~of this Part~~. These standards shall be furnished to the school by the Secretary of State before the visit if the school requests them. If all qualifications and standards are met, the school shall be certified to offer instruction to students under the age of 18.
 - 2) The accreditation of each school is renewable upon the expiration date of the school license, provided all qualifications and standards are met and provided the school has been in compliance with this Part ~~all rules~~.
 - 3) Only qualified teaching personnel may teach persons under age 18. Exception: in the event of an emergency situation in which ~~wherein~~ the only available teacher terminates his or her employment, or must take a leave of absence, while a course remains incomplete, other licensed instructors may take over and complete the course. No new courses may be started before properly qualified teaching personnel are again available. In all such cases, the Department must give prior approval. Approval shall not be given until the Department has checked the roster of instructors at the school and determined that no other teacher licensed by the Secretary of State to teach students under 18 is available at the school.
 - 4) A teen accredited driving school must submit a permit cancellation request to the Secretary of State for any teenage student with an instruction permit who withdraws from, or fails to complete, the teenage driver education program.
- b) Required Facilities – All teen accredited driver training schools must provide all classroom and vehicle facilities and equipment as prescribed in the driving school laws and regulations ~~as~~ administered by the Secretary of State. Those who desire to provide instruction for persons under the age of 18 must comply with Section 1060.50 ~~of this Part~~. Schools in operation at the time that this Part becomes

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~~effective may continue to use their present classroom facilities as long as they continue to occupy them.~~

1) Required Course of Instruction

A) One copy of an outline covering the topics to be taught in the classroom phase of instruction, and ~~one~~ copy of an outline of the behind-the-wheel phase of instruction constructed along the lines of the recommended "Illinois Driver Education Curriculum-" shall be maintained. ~~The Said~~ outlines must meet the approval of the Director of the Department.

i) Accredited teen driver training schools must follow the approved classroom and behind-the-wheel course outlines that are submitted to the Director of the Department at the time of application for certification. The Department shall determine compliance with this provision by unannounced inspections of teen classes and records. At least one ~~such~~ inspection shall take place every 2 months.

ii) If ~~thesuch~~ classroom or behind-the-wheel outlines are substantially changed, revised outlines must be submitted in duplicate to the Director of the Department for approval. A letter shall be sent to the driver training school informing it of whether it~~them if their~~ classroom or behind-the-wheel outline has been approved.

B) Instructional materials shall be available and shall include a form of video delivery that corresponds ~~one of the following: a 16 mm sound projector and screen, video equipment with films processed on video tape, a film strip or slide projector and films which correspond~~ with the outline described in subsection (b)(2)(A) ~~of this Section.~~

C) A professional library containing an assortment of reference and textbooks, pamphlets and other publications shall be~~which is~~ available for the use of students or teachers.

c) Teacher Qualifications

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- 1) Classroom Teacher Qualifications – Each teen accredited driver training school must have at least one classroom instructor employed who meets the standards of IVC Section 6-411 ~~of the Illinois Vehicle Code [625 ILCS 5/6-411]~~, pertaining to classroom instructors who teach approved driver education courses to students under 18 years of age.
 - A) A classroom driver training instructor teaching the teen accredited program must comply with Sections 1060.120 and 1060.130 ~~of this Part.~~
 - B) The instructor must possess good physical and mental health. An application/physical exam form, ~~will be~~ provided by the Secretary of State, ~~which~~ must be completed by the instructor and a physician.
 - C) The instructor must qualify under one of the following requirements:
 - i) Be a certified teacher meeting the requirements of 23 Ill. Adm. Code 252.40 ~~(b)(3)~~. (Minor – 16 semester hours)
 - ii) Hold a baccalaureate degree, have ~~one~~ year of teaching experience in primary, secondary or higher education, and complete a 48 hour course approved by the Director of the Department.
 - iii) Complete the 48 hour course or an equivalent college or university course (a course, at least 48 hours in length, designed to provide individuals with the knowledge, methods and procedures specific to conducting driver education instructional courses, that has been approved by the Director of the Department) and provide written documentation verifying ~~he or she has~~ had 2 months of experience teaching behind-the-wheel to adults.
 - iv) Hold a valid State teaching certificate and complete a 48 hour behind-the-wheel and classroom course approved by the Director of Driver Services.

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- 2) Behind-the-wheel Teacher Qualifications – Behind-the-wheel teachers of driving shall be those who have passed an objective typewritten examination based upon current textbooks and the Motor Vehicle Code; a practical test regarding their ability to drive and to instruct others; and investigation of their moral character and driving record as required in IVC Section 6-411(a) through (f) of the Illinois Vehicle Code [625 ILCS 5/6-411(a) through (f)] and supplementary regulations. Each teen accredited driver training school must have at least one behind-the-wheel instructor who meets the standards of IVC Section 6-411 pertaining to behind-the-wheel instructors who teach approved driver education courses to students under 18 years of age.
- A) A driver training instructor teaching the teen accredited behind-the-wheel program must comply with Sections 1060.120 and 1060.130 ~~of this Part.~~
- B) The instructor must possess good physical and mental health. An application/physical exam form, ~~will be~~ provided by the Secretary of State, ~~which~~ must be completed by the instructor and a physician.
- C) The instructor must qualify under one of the following requirements:
- i) Be a certified teacher meeting the requirements of 23 Ill. Adm. Code 252.40 ~~(b)(3).~~
 - ii) Hold a baccalaureate degree and have 2 months of experience in teaching behind-the-wheel to adults.
 - iii) Have 7 years of uninterrupted teaching experience in a commercial driver training school.
 - iv) Be licensed by the Secretary of State, complete the 48 hour course (48 Hour Course – a course, at least 48 hours in length, designed to provide individuals with the knowledge, methods and procedures specific to conducting driver education instructional courses that has been approved by

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the Department Director) or an equivalent college or university course approved by the Director of Driver Services, and provide written documentation verifying ~~he or she has~~they have had 2 months of experience teaching behind-the-wheel to adults.

- v) Hold a valid State teaching certificate and complete a 48 hour course approved by the Director of Driver Services.
- 3) Classroom and/or behind-the-wheel driver education teachers are to be assigned not more than 12 clock hours of instructional work daily. No teen instruction, classroom or behind-the-wheel, can take place between the hours of 10:00 p.m. and 6:00 a.m.
- d) Student Qualifications
- 1) A driver training school or driver training instructor licensed by the Secretary of State shall comply with all of the requirements of IVC Section 6-408.5 ~~of the Illinois Vehicle Code [625 ILCS 5/6-408.5]~~ prior to requesting a certificate of completion from the Secretary of State.
 - 2) A superintendent or chief school administrator may waive the requirements contained within IVC Section 6-408.5 ~~of the Illinois Vehicle Code~~ if he/she deems it to be in the best interests of the student or dropout. The State Board of Education may, at ~~its~~their discretion, by rule or regulation, establish guidelines for the waiver of the requirements of IVC Section 6-408.5 ~~of the Illinois Vehicle Code [625 ILCS 5/6-408.5]~~.
 - 3) Prior to a driver training school or driver training school instructor requesting a certificate of completion for a student, the driver training school or driver training instructor must verify that the student is enrolled in school and has received a passing grade in at least 8 courses during the 2 semesters. Verification of a student's eligibility to obtain a certificate of completion from the Secretary of State shall be by one of the following methods:
 - A) obtain written documentation on a form prepared or approved by the Secretary of State stating the student has received a passing grade in at least 8 courses during the previous 2 semesters;

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- B) obtain written waiver from a superintendent or school administrator on a form prepared or approved by the Secretary of State;
 - C) obtain written verification on a form prepared or approved by the Secretary of State stating the student is enrolled in a home school;
 - D) obtain copies of the student's report card and/or transcript for the previous 2 semesters indicating a passing grade in at least 8 courses during the previous 2 semesters.
- 4) Verification of eligibility for any person who has dropped out of school and has not yet attained the age of 18 years shall be by one of the following methods:
- A) obtain written documentation verifying the dropout's enrollment in GED or an alternative education program or obtain a copy of the dropout's GED certificate;
 - B) obtain written verification that the student prior to dropping out, had received a passing grade in at least 8 courses during the 2 previous semesters last ending prior to requesting a certificate of completion; or
 - C) obtain written consent on a form prepared or approved by the Secretary of State from the dropout's parents or guardian and the regional superintendent.
- 5) Students enrolled in a driver training school shall be informed in writing of the eligibility requirements of IVC Section 6-408.5 ~~of the Illinois Vehicle Code~~ at the time of registration that~~which~~ shall be documented in the student's file.
- 6) The driver training school and/or driver training school instructor shall maintain a copy and make available for inspection all written documentation required by this Section.

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7) The driver training school may not enroll any students who will not be at least 15 years of age prior to the end of the classroom portion of the course.

e) Classroom Instruction – ~~For Persons~~~~for persons~~ under ~~Age~~age 18 ~~Years~~years

- 1) Classroom instruction shall include not less than 30 class hours. Instructional periods are to be no longer than 2 hours daily with meetings distributed regularly throughout the minimum of ~~4~~four complete weeks. The maximum number of students cannot exceed 30 per class for classroom instruction, ~~except that, if~~~~unless~~ the size of the classroom exceeds 350 square feet, ~~then~~a maximum of 35 students shall be allowed.
- 2) Classroom instruction shall include subject matter relating to the rules of the road, safe driving practices, pedestrian safety, driver responsibility, theory of driving, defensive driving techniques, behavioral characteristics of drivers, auto insurance and financial responsibility, development of perception for driving, emergency situation procedures, the use of automobile safety devices, and the effects of alcohol and/or other drugs on driving.
- 3) Each classroom course must have a definite starting date and completion date. No more than one classroom course may be taught during any same time period in the same classroom. Late registrations shall not be accepted beyond the third day of the course, at which time the course must be closed to further enrollments.
- 4) Late registrants and absentees shall be given make-up instruction and assignments. No school shall permit the student to be absent from more than 4 class sessions without requiring the student to re-enroll in a later course and to start over.
- 5) The teaching facilities must provide adequate, comfortable seating for students. Lighting must be adequate and the maintenance (housekeeping) of the room orderly.
- 6) A textbook on driver education must be in the possession of each student for the duration of the course, to be used as a regular part of the course content, and consistent with the recommended course outline.

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- 7) Audio-visual materials shall be used as a supplement to the teacher's presentation, but not as a replacement. Reference materials are to be available to the students and their use assured by assignments. All assignments are to be made in advance of due dates and should include outside reading as well as preparation for testing.
 - 8) A regular schedule of classroom testing shall be followed. Student progress in acquaintance with information, data, and knowledge is to be periodically evaluated. Criteria for passing or failing the course must be evident to the students and successful completion clearly defined.
 - 9) Each student shall be informed prior to the time instruction begins of the character and amount of any and all fees or charges made for enrollments or registration, tuition, use of equipment, text and reference materials, supplies, and any service, equipment, or materials provided by the commercial driving school.
 - 10) Instruction for each student in the class shall begin on the date and location designated by advertisement and continue throughout the designated period unless the course is cancelled and the student is refunded any fees already paid.
 - 11) A listing of students enrolled in ~~each and every~~ the classroom ~~course~~ shall be sent to the Department of Driver Services Blue Slip Unit within 3 days after the third day of classroom instruction on forms provided by the Secretary of State. A certificate will not be issued to anyone whose name has not been submitted on this form, signed by an authorized official of the school.
- f) Laboratory Instruction – ~~For Persons~~~~for persons~~ under ~~Age~~age 18 ~~Years~~years
- 1) Laboratory instruction shall not begin until ~~such time as~~ the student is enrolled in a classroom program of driver education and possesses the basic information required for safe operation of a vehicle in traffic. At least 4 hours of classroom instruction must be given before behind-the-wheel lessons are started.
 - 2) Each student must have in his or her possession, when engaged in vehicle

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operation, a valid instruction permit issued by the Secretary of State.

- 3) ~~No fewer~~~~Not less~~ than ~~2~~~~two~~ nor more than ~~4~~~~four~~ students are to occupy the car with an instructor when instruction is in progress. Student driving experiences shall be for periods of not more than 90 minutes for each student per ~~day~~~~session~~. The accumulation of 6 hours of practice driving shall be distributed regularly throughout a minimum of ~~2~~~~two~~ complete weeks. Although observation time in the car may not be counted as practice driving, a minimum of 6 hours is required. The only exception shall be when a parent requests that observers be excluded because the parent has chosen an alternate formula. The alternate formula may substitute 1 additional hour of behind-the-wheel instruction for 3 hours of observation; or 2 additional hours of behind-the-wheel instruction for 6 hours of observation. If an alternate formula is chosen, the student may drive alone with an instructor. The school must maintain on file a parental signature authorizing the student to take an alternate formula for the behind-the-wheel portion of instruction.
 - 4) Each student shall receive a minimum of 6 full hours of behind-the-wheel instruction. There can be no allowance for any absences without actual make-up time spent behind-the-wheel. Satisfactory completion denotes that each student has the competencies to be certified by the school for issuance of a certificate.
 - 5) Lesson time or practice driving time may not be used to call for, deliver or dismiss other students to their homes or pick-up points.
 - 6) Practice driving instruction shall include actual experience in starting, stopping, shifting, turning, backing, parking, steering, and emergency situation procedure in a vehicle equipped according to ~~IVC~~ Section 6-410 ~~of the Illinois Vehicle Code [625 ILCS 5/6-410]~~.
- g) Records
- 1) Records shall be maintained by schools ~~that~~~~which~~ substantiate daily attendance, lesson time, and periodic evaluation of each student. Also recorded shall be the beginning and ending dates of classroom, as well as laboratory, instruction. Students are to be identified ~~by their social security numbers as well as~~ by name, address and other personal

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information. ~~The~~~~Such~~ records are to be on file in the office of the management for a period of 3 years.

- 2) A Secretary of State form shall be used for submitting the names of those students who have satisfactorily fulfilled the requirements of the complete course in driver education and who qualify for a certificate. The form shall be signed by an authorized official of the school.

(Source: Amended at 33 Ill. Reg. 15811, effective October 27, 2009)

Section 1060.200 Commercial Driver's License and/or Endorsement and/or Accreditation

- a) Accreditation of the Program – Each commercial driver training school that desires to offer instruction to those individuals who wish to obtain a CDL and/or endorsement and/or restriction must be accredited by the Secretary of State through the Department of Driver Services before ~~such~~ instruction can be offered or advertised.
 - 1) Upon receipt of proper application for accreditation, the Secretary of State shall investigate the program and verify the information contained in the application. A Secretary of State employee shall contact the applicant and make an appointment to inspect the school's facilities. At the time of inspection, the Secretary of State employee shall verify that the school meets the standards for CDL accreditation set forth in Section 1060.190(b) through (f) in addition to all other applicable Sections within this Part. These standards shall be furnished to the school by the Secretary of State before the visit, if the school requests them. If all qualifications and standards are met, the school shall be accredited to offer instruction on how to operate a vehicle with CDL and/or endorsement and/or restriction classification.
 - 2) The accreditation of each school is renewable upon the expiration date of the school license, provided all qualifications and standards are met ~~and,~~ ~~provided~~ the school has been in compliance with this Part ~~all rules~~.
 - 3) Only qualified teaching personnel who already possess a CDL and/or endorsement and/or restriction classification may teach the drive portion of instruction.

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- b) Required ~~Facilities~~~~facilities~~ – All CDL, ~~and/or~~ endorsement and/or restriction accredited schools must provide all classroom and vehicle facilities and equipment ~~as~~ prescribed in ~~IVC Chapter 6, Article IV of the Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/Ch. 6, Art. IV]~~ and Section 1060.50 of this Part. Those who desire to provide instruction to persons who wish to obtain a CDL, ~~and/or~~ endorsement and/or restriction classified license must additionally provide a vehicle training area, owned or leased by the school, with sufficient space to properly accommodate the number of vehicles the school has in operation and appropriate off-street maneuvers.
- 1) Required ~~Course~~~~course~~ of ~~Instruction~~~~instruction~~:
- A) CDL accredited driving schools must administer driving instruction that corresponds to a curriculum ~~that will be~~ provided to the school by the Secretary of State. Each CDL accredited driving school must provide the minimum of 160 hours of instruction in not less than a 4 week period to each student, as indicated in the curriculum.
- B) The following curriculum must be offered to each first time CDL student in a minimum of 4 weeks. Each student must receive 160 hours of CDL instruction as outlined in this subsection (b)(1)(B). The training schedule outlined must follow the Illinois Occupational Skill Standards, Entry-Level Truck Driver Manual (March 1999) endorsed for Illinois by the Illinois Occupational Skill Standards and Credentialing Counsel. This ~~manual~~~~Manual~~ is available from the Secretary of State Driver Facility, 650 Roppolo Drive, Elk Grove Village IL 60007.
- i) Classroom. 40 hours of classroom instruction; this includes, but is not limited to, preparation for the Secretary of State's written examinations and all chapters of this curriculum.
- ii) Range. 16 hours of ~~vehicle training area~~~~training yard~~ behind-the-wheel instruction. This requires one-on-one instruction with a properly licensed CDL instructor and vehicle on an approved ~~vehicle training area~~~~training lot~~.

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- iii) Over the Road. 16 hours of behind-the-wheel instruction on public streets and highways. This requires ~~one-on-one~~ instruction with a properly licensed CDL instructor and vehicle.
 - iv) Observation. 10 hours of observation experience composed of observation of the ~~vehicle training area/practice range~~ and over-the-road training.
 - v) Remedial Training. 78 hours of additional classroom training, observation, and ~~vehicle training area/practice range~~/over-the-road training based on each CDL student's specific needs.
- C) Instructional materials shall be available and shall include a form of video delivery, ~~at least one of the following: a 16 mm sound projector and screen, video equipment with films processed on video tape, a film or films.~~
- D) A professional library containing an assortment of reference and textbooks, pamphlets, and other publications, including but not limited to the CDL Study Guide, ~~that are~~ available for the use of students and teachers.
- E) A brush-up course of instruction may be offered to individuals who currently hold or have held a CDL issued under the requirements of 49 CFR 383, as incorporated in Section 1060.5-(2006). The school must maintain records that verify students qualify for a brush-up course. This course may be offered on an hourly basis. No brush-up course may be offered to any individual who has never held a CDL or its equivalent.
- F) Classroom ~~Instruction/instruction~~ – CDL, ~~and/or~~ endorsement and/or restriction classification instruction.
- i) Each classroom course must have a definite starting date and completion date. A listing of students enrolled in each course shall be sent to the Secretary of State, within 3 days after the third day of classroom instruction, on forms

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provided by the Secretary of State.

- ii) Classroom instruction shall include subject matter relating to the rules of the road as contained in the CDL Study Guide, safe driving practices, pedestrian safety, defensive driving techniques, behavioral characteristics of drivers, federal regulations relating to the Department of Transportation and CDL standards (49 CFR 383-~~(2006)~~, ~~as incorporated in Section 1060.5 (Commercial Driver's License)~~), vehicle insurance, the use of safety devices, and the effects of alcohol and drugs on driving.
 - iii) Practice driving instruction must comply with the curriculum provided by the Office of the Secretary of State.
 - iv) Audio-visual materials shall be used as a supplement to the teacher's presentation, but not as a replacement. Reference materials are to be available to the students and their use assured by assignments. All assignments are to be made in advance of due dates and shall include outside reading as well as preparation for testing.
 - v) A regular schedule of classroom testing shall be followed. Student progress is to be periodically evaluated. Criteria for passing or failing the course shall be evident to the student, and successful completion clearly defined.
 - vi) Each student shall be informed, prior to the time instruction begins, of the amount of any and all fees or charges made for enrollment or registration, tuition, use of equipment, or materials provided by the CDL₂ ~~and/or~~ endorsement and/or restriction accredited driver training program.
 - vii) Instruction of each student in the class shall begin on the date and location designated by advertisement and continue throughout the designed period, unless the course is cancelled and the student is refunded any fees already paid.
- G) Laboratory Instruction – For persons taking instruction for CDL₂

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- ~~and/or~~ endorsement and/or restriction classification.
- i) Behind-the-wheel instruction shall not begin until ~~such time as~~ the student is enrolled in a classroom program of CDL, ~~and/or~~ endorsement and/or restriction classification driver training and obtains the required knowledge for the safe operation of a vehicle in traffic as provided in 49 CFR 383.110-121 ~~(2006)~~.
 - ii) Each student must have in his/her possession, when engaged in vehicle operation, a valid and properly classified instruction permit issued by the Secretary of State, unless previously licensed in a classification representative of the vehicle he/she intends to drive.
 - iii) Practice driving instruction shall include but not be limited to pre-trip inspection, actual experience in starting, stopping, shifting, turning, backing, docking, parking, steering, and emergency situation procedures.
 - iv) CDL skills testing for classification A must be given in a representative power unit with a multi-range transmission with no fewer than 9 forward gears and a representative trailer at least 48 feet long with a tandem axle.
- 2) Student Ratio Per Course~~ratio per course~~
- A) The total number of students enrolled in each CDL accredited course in any 30-day period shall not exceed 5 students per each currently licensed instructor.
 - B) The total number of students enrolled in each CDL accredited course in any 30-day period shall not exceed 6 students for each currently registered CDL vehicle.
- c) Classroom Teacher Qualification~~teacher qualifications~~
- 1) Each CDL, ~~and/or~~ endorsement and/or restriction accredited driver training school must have at least one classroom instructor employed by

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the school who meets the standards of IVC Section 6-411 ~~of the Illinois Vehicle Code [625 ILCS 5/6-411]~~.

- 2) Required Classroom Teacher Qualifications~~classroom teacher qualifications~~:
 - A) A driver training instructor teaching the classroom portion of a CDL, ~~and/or~~ endorsement and/or restriction accredited course must comply with Sections 1060.120 and 1060.130 ~~of this Part~~.
 - B) The instructor must possess good physical and mental health, as determined by a physician. An application/physical examination form, ~~shall be~~ provided by the Secretary of State, ~~which~~ shall be completed by the instructor and a physician.
 - C) A classroom instructor must pass an objective type instructor written examination based upon the Illinois Vehicle Code, this Parteommercial school rules and regulations, and the Commercial Motor Vehicle Safety Act of 1986 (49 USC 2704). The written examination shall consist of 125 questions (90 multiple choice and 35 true/false) and the instructor must correctly answer 106 questions to pass.
- d) CDL, Endorsement~~and/or endorsement~~ and/or Restriction Behind-the-Wheel Teacher Qualifications~~restriction behind-the-wheel teacher qualifications~~
 - 1) Each CDL, ~~and/or~~ endorsement and/or restriction accredited driver training school must have at least one behind-the-wheel instructor employed by the school who meets the standards of IVC Section 6-411 ~~of the Illinois Vehicle Code [625 ILCS 5/6-411]~~.
 - 2) Required Behind-the-Wheel Teacher Qualifications~~behind-the-wheel teacher qualifications~~:
 - A) A driver training instructor teaching the behind-the-wheel portion of a CDL, ~~and/or~~ endorsement and/or restriction accredited course must comply with the provisions of Sections 1060.120 and 1060.130 ~~of this Part~~ and be licensed in a classification representative of the vehicle in which he or she intend~~they intend~~

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to teach for at least 3 consecutive years immediately prior to application (a ~~one~~ month lapse in renewal will not negate the 3 consecutive years requirement).

- B) The instructor must possess good physical and mental health, as determined by a physician. An application/physical examination form, provided by the Secretary of State, shall be completed by the instructor and a physician.
- C) The instructor shall give instruction only in the classification, ~~and/or~~ endorsement and/or restriction in which he/she is licensed.
- D) A behind-the-wheel instructor must pass an objective type instructor written examination based upon the Illinois Vehicle Code, commercial school rules and regulations, and the Commercial Motor Vehicle Safety Act of 1986 (49 USC 2704), as provided for in subsection (c)(1)(C) of this Section. In addition, a behind-the-wheel instructor must pass a practical test regarding his/her ability to drive a vehicle of CDL, ~~and/or~~ endorsement and/or restriction classification (92 Ill. Adm. Code 1030.85).

e) Student Instruction Records

- 1) Records shall be maintained by schools that document daily attendance, lesson time, and periodic evaluation of each student. Also recorded shall be the dates of classroom instruction, behind-the-wheel instruction and observation time. Students are to be identified by their ~~social security numbers as well as by~~ name, address, and other personal information. A driver license number also must be entered on the student record. ~~The Such~~ records are to be on file in the office of the management for a period of 3 years.
- 2) The driver school with a CDL, ~~and/or~~ endorsement and/or restriction accreditation must meet all requirements of Section 1060.60 ~~of this Part~~.
- 3) The school and each student must maintain separate but identical logs of the student's behind-the-wheel instruction and observation time. The logs must include the dates of instruction, type of instruction, student/instructor signatures and odometer readings of the vehicles used for instruction.

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- 4) A Secretary of State form shall be used for submitting names of those students who have satisfactorily fulfilled the CDL accreditation course. The form shall be signed by an authorized official of the school.
- f) The Secretary of State shall suspend, ~~or~~ revoke, cancel or deny the license and/or accreditation of any driver training school or driver training instructor if the school or instructor fails to comply with ~~the provisions of~~ this Part or 49 CFR 383 ~~(2006)~~.
- g) The Secretary of State may reduce the amount of scheduled skills testing for CDL Accredited schools that have a student failure rate of 45% or greater in the preceding 2 calendar months.

(Source: Amended at 33 Ill. Reg. 15811, effective October 27, 2009)

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- 1) Heading of the Part: Pupil Transportation Reimbursement
- 2) Code Citation: 23 Ill. Adm. Code 120
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
120.30	Amendment
120.50	Amendment
120.90	Amendment
120.110	Amendment
- 4) Statutory Authority: 105 ILCS 5/Art. 29
- 5) Effective Date of Rulemaking: November 2, 2009
- 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 amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 6, 2009; 33 Ill. Reg. 9265
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were requested by JCAR, and no agreements letter was issued.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any other proposed rulemakings pending on this Part? No
- 15) Summary and Purpose of Amendments: These amendments add specificity to rules affecting school districts that allow for transportation to and from day care locations, requiring that such districts must provide that service consistently along regular bus routes and/or new routes without discrimination among the various types of day care

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providers. In addition, unrelated changes are being made to Section 120.110(a)(1) and 120.110(a)(3)(C) for purposes of clarification only. Finally, references to Part 110 rules (Program Accounting Manual) are replaced by references to the new rules governing the same topics (Part 100; Requirements for Accounting, Budgeting, Financial Reporting, and Auditing). Similarly, a reference to Part 275 (Pupil Transportation) is deleted because that Part was repealed in 2005.

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

Tim Imler
Funding and Disbursements Division
Illinois State Board of Education
100 North First Street, E-320
Springfield, Illinois 62777-0001

217/782-5256

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER c: FINANCEPART 120
PUPIL TRANSPORTATION REIMBURSEMENT

SUBPART A: SCHOOL REIMBURSEMENT

Section

120.10	Definitions
120.20	Transportation and Student Discipline
120.30	Pupil Transportation Services Eligible for Reimbursement
120.40	Pupil Transportation Services and Costs Not Eligible for Reimbursement
120.50	Reimbursable Direct Operating Costs
120.60	Reimbursable Annual Depreciation Allowances
120.70	Deductions from Direct Operating Costs
120.80	Reimbursable Indirect Cost for Pupil Transportation Services
120.90	Cost Proration Related to Pupil Transportation
120.100	Reimbursement Formulas
120.110	Reporting Requirements
120.115	Fully Allocated Costs of Transportation
120.120	Bus Scheduling Services and Software
120.130	Seat Back Reimbursement (Repealed)

SUBPART B: CUSTODIAN REIMBURSEMENT FOR PUPIL TRANSPORTATION

Section

120.200	Definitions
120.210	Custodians Eligible for Reimbursement
120.220	Custodians Not Eligible for Reimbursement
120.230	Responsibilities of Schools
120.235	Responsibilities of Public and Nonpublic Chief Administrative Officers (Repealed)
120.240	Reimbursement
120.245	Responsibilities of the Regional Superintendents of Schools
120.250	Dispute Resolution
120.260	Audit and Enforcement

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AUTHORITY: Implementing and authorized by Article 29 of the School Code [105 ILCS 5/Art. 29].

SOURCE: Adopted at 10 Ill. Reg. 19438, effective October 31, 1986; amended at 10 Ill. Reg. 21675, effective December 11, 1986; amended at 12 Ill. Reg. 4147, effective February 5, 1988; amended at 13 Ill. Reg. 7731, effective May 8, 1989; amended at 16 Ill. Reg. 10213, effective June 10, 1992; emergency amendment at 18 Ill. Reg. 12853, effective August 9, 1994, for a maximum of 150 days; emergency expired January 6, 1995; amended at 21 Ill. Reg. 2165, effective February 1, 1997; amended at 26 Ill. Reg. 1169, effective January 16, 2002; amended at 28 Ill. Reg. 4575, effective February 24, 2004; amended at 29 Ill. Reg. 12422, effective July 28, 2005; amended at 33 Ill. Reg. 15848, effective November 2, 2009.

SUBPART A: SCHOOL REIMBURSEMENT

Section 120.30 Pupil Transportation Services Eligible for Reimbursement

Each school district that files a claim for State reimbursement for pupil transportation shall be subject to the requirements of this Subpart A in order to be eligible for such reimbursement. Pupil transportation services eligible for reimbursement are listed below:

- a) Regular Pupil Transportation Services for Pupils in Kindergarten or Any of Grades 1 through 12
 - 1) Transportation services provided for pupils residing at a distance of ~~1 1/2~~^{1 1/2} ~~zone~~ ~~and one-half~~ miles or more from the attendance center to which they are assigned.
 - A) *The distance shall be measured from the exit of the property where the pupil resides to the point where pupils are normally unloaded at the attendance center to which they are assigned (Section 29-3 of the School Code [105 ILCS 5/29-3]).*
 - B) *If a pupil is at a location within the school district other than his/her residence for child care purposes at the time for transportation to and/or from school, that location may be considered for purposes of determining the 1 1/2 miles from the school attended (Section 29-5 of the School Code). A district that chooses to consider locations other than individual students'*

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residences shall adopt a written policy establishing this practice. At the district's discretion, its policy may limit pick-up and drop-off to students in day care locations along the district's regular routes, or it may extend services via newly established routes. In either case, the district shall not discriminate among types of locations where day care is provided, which may include, but need not be limited to, the premises of licensed providers, the homes of relatives, or the homes of neighbors, any of which must be located within the district's boundaries.

- C) ~~Asuch~~ school board may comply with the provisions of this Section by providing free transportation for pupils to and from an assigned school and a pick-up point located not more than one and one-half miles from the home of each pupil assigned to such point (Section 29-3 of the School Code).
- 2) Transportation services provided for pupils residing within a distance of ~~1½one and one-half~~ miles from the attendance center to which they are assigned from pickup points at the beginning of the school day and back again at the close of the school day, effective on the date that the Illinois Department of Transportation grants written approval pursuant to 92 Ill. Adm. Code 556 (Rules on Transporting Pupils Where Walking Constitutes a Serious Safety Hazard) that a serious safety hazard exists due to vehicular traffic, for specific areas and specific ages.
- 3) Transportation services provided for nonpublic school pupils when pupil transportation services for the nonpublic school pupils are provided on the same basis as the transportation services for public school pupils as provided in Section 29-4 of the School Code.
- 4) Transportation services provided to a pupil who is required to be transported but is also required for disciplinary reasons to serve a detention period either before or after the regular school day.
- 5) Transportation which is provided prior to or following voluntary, extracurricular and/or cocurricular activities, including sport practices, club meetings, drama rehearsals, or choral and band practices where such activities are scheduled before or after the school day, qualifies as transportation provided at the beginning or end of the school day and is

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therefore subject to reimbursement with respect to students who are required to be transported.

- 6) Transportation services provided for pupils between attendance centers during the school day. This includes transportation of vocational pupils between attendance centers or a building or other trades skill development site of less than one and one-half miles.
- b) Vocational pupil transportation services provided during the school day for vocational pupils transported one and one-half miles or more one way from their assigned attendance center to a vocational program located at:
 - 1) An area vocational center;
 - 2) Another school district; or
 - 3) A building or other trades skill development site.
 - c) Special education pupil transportation services, including field trips, provided for special education pupils in accordance with Sections 14-7.02 and 14-13.01(b) of the School Code [105 ILCS 5/14-7.02 and 14-13.01(b)] and with 23 Ill. Adm. Code 226 (Special Education). This includes field trips (community based instruction) when approved by the district's state approved director of special education as defined in 23 Ill. Adm. Code 226.
 - d) Transportation provided to any student in connection with a field trip:
 - 1) that occurs during a day of student attendance included on the official school calendar of the school district;
 - 2) whose hours are part of the claimable clock hours on the General State Aid Claim (i.e., the destination of the trip is considered to be the assigned attendance center for all students enrolled in the class);
 - 3) that is provided free of charge to the pupil;
 - 4) that is part of the school's curriculum for which pupils earn credit for graduation; and

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- 5) that is not listed in Section 120.40(a)(1) or (2) of this Part.

(Source: Amended at 33 Ill. Reg. 15848, effective November 2, 2009)

Section 120.50 Reimbursable Direct Operating Costs

All reimbursable direct operating costs must be paid from the Transportation Fund of a school district, except for those items required by Section 17-7 of the School Code to be paid from the Operation and Maintenance Fund and IMRF payments made for transportation supervisory salaries. All reimbursable direct operating costs of a cooperative for special education or vocational education must be paid from function 2550 (Pupil Transportation Services; see 23 Ill. Adm. Code ~~100.Table D+10.Table D~~). Reimbursable direct operating costs are listed below:

- a) District owned and operated pupil transportation services, including districts which make payments to other LEAs.
 - 1) *The cost of physical examinations for school bus drivers required for their employment* (Section 29-5 of the School Code) ~~pursuant to 23 Ill. Adm. Code 275 (Pupil Transportation)~~.
 - 2) Salaries and/or wages for the following employees:
 - A) School bus drivers;
 - B) School bus maintenance personnel;
 - C) Chief mechanic;
 - D) Special education attendants or aides for that portion of time they assist special education pupils, i.e., for transit time only;
 - E) Transportation supervisory salary costs as defined in Section 120.10 of this Part when paid from the Transportation Fund as set forth in Section 120.90(b) and (c) of this Part; and
 - F) Dispatchers and clerical workers who support the transportation functions, when their positions are documented and records support the percentage of time claimed for each position.

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- 3) The cost of the following benefits for the employees enumerated in subsection (a)(2) of this Section (if proration is necessary for salaries and/or wages, benefits shall be prorated in the same manner):
 - A) Health insurance;
 - B) Life insurance;
 - C) Dental insurance;
 - D) Vision insurance;
 - E) Annuities in lieu of health, life, dental, or vision insurance;
 - F) Municipal retirement contribution, if paid by the employer as part of the transportation supervisory salary costs; and
 - G) Teacher retirement contributions, if paid by the employer from the Transportation Fund as part of the transportation supervisory salary costs.
- 4) Payments made to other school districts for providing pupil transportation services and expenditures consistent with this Part.
- 5) Payments made to other agencies for computerized bus scheduling; to companies for the purchase of computer software used to establish school bus routes; and to companies for maps that identify vehicular traffic hazards.
- 6) Payments made for fuel, oil, tires, and other supplies that are necessary for the operation of pupil transportation vehicles.
- 7) The total cost of converting school bus gasoline engines to more fuel efficient engines or to engines which use alternate energy sources.
- 8) Expenditures (according to a school district's written travel reimbursement policies) for travel to workshops or meetings conducted by the regional superintendent or the State Superintendent of Education designed to improve the driving skills of school bus drivers or travel to other training

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programs that are for the enhancement of skills necessary to operate vehicles safely, manage student behavior, or address specific student needs (excluding competitions).

- 9) Expenditures for contractual maintenance services including materials, parts, supplies and labor necessary for the operation of pupil transportation vehicles or equipment used in the transportation program not exceeding \$2,500 per service.
- 10) Expenditures for lease agreements for pupil transportation vehicles, for lease/rental of less than 30 days.
- 11) Expenditures for insurance, license plates, and inspection fees pertaining to pupil transportation vehicles.
- 12) Expenditures for the rental of pupil transportation equipment for fewer than 30 days.
- 13) Transportation related building, land and building maintenance costs. The prorated costs of operation and maintenance of buildings, as set forth in Section 120.90(g) of this Part, when directly related to pupil transportation services including:
 - A) Utility costs;
 - B) Custodial supplies and services;
 - C) Insurance for buildings and/or for site improvements;
 - D) Security services;
 - E) Telephone charges incurred for the transportation program; and
 - F) Lease or rental of land or buildings for storing or maintaining transportation vehicles when leased for less than 30 days.
- 14) Expenditures for items that enhance transportation safety, costing less than \$2,500 and not funded by any other federal or State source of funding, including but not limited to:

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- A) federally approved child safety restraint systems;
 - B) reflective tape;
 - C) alarm/warning systems for child safety;
 - D) cameras used on school buses specifically for security purposes.
- b) Contractual pupil transportation services
- 1) The cost of contractual pupil transportation services, which shall be limited to the following types:
 - A) Payments to independent carriers whose drivers and vehicles comply with the Illinois Vehicle Code (e.g., to bus companies, taxi companies, limousine services, and medical transportation carriers qualifying as independent carriers); and
 - B) Payments to parents or guardians for transporting their own children when the district has an obligation to provide free pupil transportation services.
 - 2) Payments made for fuel, oil, tires, and other supplies that are necessary for the operation of pupil transportation vehicles.
 - 3) Transportation supervisory salary costs as allowed in subsections (a)(2)(E) and (a)(3)(E) and (F) of this Section.
 - 4) Transportation related building, land and building maintenance costs as allowed in Sections 120.50(a)(13) and 120.60(d) and (e) of this Part.

(Source: Amended at 33 Ill. Reg. 15848, effective November 2, 2009)

Section 120.90 Cost Proration Related to Pupil Transportation

- a) When costs or depreciation allowances are to be prorated among pupil transportation services and other nontransportation related activities, the categories used shall constitute:

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- 1) Regular pupil transportation services;
 - 2) Vocational pupil transportation services;
 - 3) Special education pupil transportation services;
 - 4) Nonreimbursable pupil transportation services; and
 - 5) Nontransportation related activities.
- b) If an employee performs multiple job duties (e.g., district/cooperatives employing a part-time transportation supervisor/director) and at least one job duty is reimbursable under pupil transportation, the salary and district paid employee benefits for such employee shall be prorated to each type of job duty based on the ratio of the number of hours worked in each job to the total hours worked.
- c) The formula for computing the district superintendent and/or joint agreement director expenses as permitted in Section 120.50(a)(2)(E) or 120.50(a)(3) of this Part is listed in this subsection (c).
- 1) The district superintendent allowable expenditures shall be prorated based on the ratio of the total transportation fund expenditures to the district's total expenditures of all funds. The district's expenditures are to be calculated in the Illinois Local Education Agency Annual Financial Report pursuant to 23 Ill. Adm. Code [100 \(Requirements for Accounting, Budgeting, Financial Reporting, and Auditing\)-10 \(Program Accounting Manual\)](#).
 - 2) The joint agreement/cooperative director allowable expenditures shall be prorated based on the ratio of total expenditures/disbursements and transfers for transportation to the total expenditures/disbursements and transfers of the joint agreement. The joint agreement/cooperative total expenditures/disbursements and transfers are to be calculated in the Joint Agreement Annual Financial Report.
- d) District owned/operated transportation systems must prorate all expenses based on the ratios of miles traveled in each category to the total miles traveled in all categories operated by the district. This method of proration includes Salaries and

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Employee Benefits, unless the district can document the number of hours worked per category to the total number of hours worked per person.

- e) Payments for all contractual transportation services must be prorated based on miles per contractor across all types of transportation provided (i.e., regular, vocational, special education, and/or non-reimbursable), with the exception of the following:
 - 1) Payments to a contractor that provides only one type of transportation service;
 - 2) Payments by a district to a contractor that provides multiple types of transportation service, a contract for each of which was separately executed on or after July 1, 2004, based on the lowest bid among at least two bids tendered, as reflected in the district's records on the procurement of these services;
 - 3) Payments to a contractor by a district for costs that are part of a contractual agreement between a cooperative or joint agreement and the contractor; and
 - 4) Payments by one district to another district for one type of transportation service.
- f) If a pupil transportation vehicle is used for more than one category of transportation service, the depreciation allowance shall be prorated based on the ratio of the number of miles traveled in each category of service to the total miles traveled in all categories.
- g) Expenditures charged to the Operations and Maintenance Fund and/or the Education Fund that are directly related to the Pupil Transportation Program Services may be claimed as direct cost reimbursement from the Transportation Program. When the district or joint agreement cannot substantiate the portion of the cost applicable to the pupil transportation program, the expenditures shall be allocated according to the square footage of the bus garage divided by the total square footage of all the district owned buildings and that result multiplied by the total expenditures of each allowable cost. The transportation portion of each allowable cost that is under \$2,500 or which has a useful life less than one year is claimed under Section 120.50(a)(13).

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(Source: Amended at 33 Ill. Reg. 15848, effective November 2, 2009)

Section 120.110 Reporting Requirements

According to the date set forth in Section 29-5 of the School Code, districts shall annually transmit the information described in subsections (a) through (e) of this Section to the State Superintendent of Education via electronic means.

- a) For regular pupil transportation services, the school districts shall annually, pursuant to Section 29-5 of the School Code, report the following items:
 - 1) Total number of enrolled pupil days in the regular pupil transportation service for each of the following:
 - A) Pupils residing ~~1½~~one and one-half miles or more from their respective assigned attendance ~~center~~center;
 - B) Pupils residing less than 1½ miles from their respective assigned attendance centers but where approval of serious safety hazards has been granted as discussed in Section 120.30(a)(2) of this Part~~one and one-half miles from their assigned attendance center~~; and
 - C) Pupils residing less than 1½ miles from their respective assigned attendance centers and without approval of serious safety hazards~~one and one-half miles from their assigned attendance center with vehicular hazard approval~~.
 - 2) Total number of student attendance days on the official school calendar.
 - 3) Total number of pupils in the following categories:
 - A) Public school pupils transported during the regular school term;
 - B) Nonpublic school pupils transported during the regular school term;
 - C) General education prekindergarten~~Pre-kindergarten~~ pupils

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transported during the regular school term on regular routes for grades kindergarten-12; and

- D) Pupils transported on reimbursable field trips who are not enrolled to be transported on a reimbursable regular route.
 - 4) Total number of vehicle miles traveled to and from school during the regular school term, including the total mileage traveled during the regular school term for reimbursable regular field trips.
 - 5) Expenditures and deductions as set forth in Sections 120.50 through 120.80 of this Part.
- b) For vocational pupil transportation services, the school districts shall annually report the following items:
- 1) Total number of pupils transported during the regular school term;
 - 2) Total number of vehicular miles traveled during the regular school term, including the total mileage traveled during the regular school term for reimbursable vocational field trips; and
 - 3) Expenditures and deductions as set forth in Sections 120.50 through 120.80 of this Part.
- c) For special education pupil transportation services, the school districts shall annually report the following information:
- 1) Total number of special education pupils transported during the regular and summer school terms;
 - 2) Total number of vehicular miles traveled during the regular and summer school terms, including the total mileage traveled for reimbursable special education field trips; and
 - 3) Expenditures and deductions as set forth in Sections 120.50 through 120.80 of this Part.
- d) For nonreimbursable pupil transportation services, the school districts shall

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annually report the:

- 1) Total number of vehicle miles traveled during the regular and summer school terms; and
- 2) Expenditures as set forth in Sections 120.50 through 120.80 of this Part.

(Source: Amended at 33 Ill. Reg. 15848, effective November 2, 2009)

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- 1) Heading of the Part: The Administration and Operation of the Teachers' Retirement System
- 2) Code Citation: 80 Ill. Adm. Code 1650
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
1650.417	New
1650.450	Amended
1650.470	Amended
- 4) Statutory Authority: Implementing and authorized by Article 16 of the Illinois Pension Code [40 ILCS 5/16]
- 5) Effective Date of Amendments: November 2, 2009
- 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 amendments, including any material incorporated by reference, is on file in the Teachers' Retirement System's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: June 19, 2009; 33 Ill. Reg.8160
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: Non-substantive changes were made in Section 1650.450(c)(11).
- 12) Have all the changes agreed upon by the agency and JCAR been as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments:

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The System amended its "Compensation Recognized as Salary" rule (Section 1650.450) to require members participating in non-qualified deferred compensation arrangements under the federal Internal Revenue Code §457(f) requirements to establish that the contributions to such non-qualified arrangements are exempt from regular TRS member contribution.

The System amended its "Rollover Distributions" rule (Section 1650.470) to comply with changes in the federal Internal Revenue Service regulations governing member rollover options.

The System promulgated a new rule "Mandatory Distributions Pursuant to Section 401(a)(a) of the Internal Revenue Code" (Section 1650.417), to deal with the situation occurring when a member fails to make a mandatory distribution election at age 70½ as required by federal law.

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

Tom Gray, General Counsel
Teachers' Retirement System of the State of Illinois
2815 West Washington
Springfield, Illinois 62794-9253

217/753-0375

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES

SUBTITLE D: RETIREMENT SYSTEMS

CHAPTER III: TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

PART 1650

THE ADMINISTRATION AND OPERATION OF THE
TEACHERS' RETIREMENT SYSTEM

SUBPART A: REPORTS BY BOARD OF TRUSTEES

Section

1650.10 Annual Financial Report (Repealed)

SUBPART B: BASIC RECORDS AND ACCOUNTS

Section

1650.110 Membership Records
1650.120 Claims Records (Repealed)
1650.130 Individual Accounts (Repealed)
1650.140 Ledger and Accounts Books (Repealed)
1650.150 Statistics (Repealed)
1650.160 Confidentiality of Records
1650.180 Filing and Payment Requirements
1650.181 Early Retirement Incentive Payment Requirements (Repealed)
1650.182 Waiver of Additional Amounts Due
1650.183 Definition of Employer's Normal Cost

SUBPART C: FILING OF CLAIMS

Section

1650.201 Disability Benefits – Application Procedure; Effective Date
1650.202 Disability Benefits – Definitions
1650.203 Disability Retirement Annuity – Definitions
1650.204 Gainful Employment – Consequences
1650.205 Medical Examinations and Investigation of Disability Claims
1650.206 Physician Certificates
1650.207 Disability Due to Pregnancy
1650.208 Disability Payments
1650.209 Computation of Annual Salary When Member Has Different Semester Salary

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	Rates (Repealed)
1650.210	Claim Applications
1650.211	Disability Recipient Eligible to Receive an Age or Disability Retirement Annuity
1650.220	Reclassification of Disability Claim (Repealed)
1650.221	When Member Becomes Annuitant
1650.222	Death Out of Service
1650.230	Medical Examinations and Investigations of Claims (Repealed)
1650.240	Refunds; Canceled Service; Repayment
1650.250	Death Benefits
1650.260	Evidence of Age
1650.270	Reversionary Annuity – Evidence of Dependency
1650.271	Evidence of Parentage
1650.272	Eligible Child Dependent By Reason of a Physical or Mental Disability
1650.280	Evidence of Marriage
1650.290	Offsets

SUBPART D: MEMBERSHIP AND SERVICE CREDITS

Section	
1650.301	Early Retirement Without Discount – Return to Teaching from a Break in Service
1650.310	Effective Date of Membership
1650.315	Verifying Service Credit
1650.320	Method of Calculating Service Credits
1650.325	Method of Calculating Service Credit for Recipients of a Disability Benefit or Occupational Disability Benefit
1650.330	Duplicate Service Credit
1650.335	Unreported Regular Service Credit and Earnings
1650.340	Service Credit for Leaves of Absence
1650.341	Service Credit for Involuntary Layoffs
1650.345	Service Credit for Periods Away From Teaching Due to Pregnancy
1650.346	Service Credit for Periods Away From Teaching Due to Adoption
1650.350	Service Credit for Unused Accumulated Sick Leave Upon Retirement
1650.351	Employer Contribution for Excess Sick Leave
1650.355	Purchase of Optional Service – Required Minimum Payment
1650.356	Payroll Deduction Program (Repealed)
1650.357	Employer Payment of Member's Optional Service and/or Upgrade Contribution Balance (Repealed)
1650.360	Settlement Agreements and Judgments
1650.370	Calculation of Average Salary (Renumbered)

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- 1650.380 Definition of Actuarial Equivalent (Repealed)
1650.390 Independent Contractors
1650.391 Optional 2.2 Upgrade of Earned and Credited Service
1650.392 2.2 Upgrade of Optional Service Not Credited at Initial Upgrade

SUBPART E: CONTRIBUTION CREDITS AND PAYMENTS

Section

- 1650.410 Return of Contributions for Duplicate or Excess Service
1650.415 Return of Optional Increase in Retirement Annuity Contributions
1650.416 Optional Increase in Retirement Annuity – 1% Contribution Reduction
1650.417 [Mandatory Distributions Pursuant to Section 401\(a\)\(9\) of the Internal Revenue Code](#)
1650.420 Interest on Deficiencies (Repealed)
1650.430 Installment Payments (Repealed)
1650.440 Small Deficiencies, Credits or Death Benefit Payments (Repealed)
1650.450 Compensation Recognized As "Salary"
1650.451 Reporting of Conditional Payments
1650.460 Calculation of Average Salary
1650.470 Rollover Distributions
1650.480 Rollovers to the System
1650.481 Employer Contribution Required for Salary Increases in Excess of 6%
1650.482 Contracts and Collective Bargaining Agreements – Loss of Exemption from Employer Contributions
1650.483 Employer Contributions for Salary Increases in Excess of 6% and Excess Sick Leave Exemption from Contributions
1650.484 Members Not Covered by Collective Bargaining Agreements or Employment Contracts
1650.485 Employer Contributions for Salary Increases in Excess of 6% – Receipt of Bill

SUBPART F: ANNUITANTS AND BENEFICIARIES

Section

- 1650.505 Beneficiary (Repealed)
1650.510 Re-entry Into Service (Repealed)
1650.520 Suspension of Benefits
1650.530 Power of Attorney
1650.540 Conservators/Guardians
1650.550 Presumption of Death

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- 1650.560 Benefits Payable on Death
- 1650.561 Valid Beneficiary Designations
- 1650.570 Survivors' Benefits
- 1650.571 Payment of Monthly Survivor Benefits to a Trust
- 1650.575 Full-time Student – Receipt of Survivors Benefits Until Age 22
- 1650.580 Evidence of Eligibility
- 1650.590 Comptroller Offset
- 1650.595 Overpayments

SUBPART G: ATTORNEY GENERALS' OPINION

- Section
- 1650.605 Policy of the Board Concerning Attorney Generals' Opinion (Repealed)

SUBPART H: ADMINISTRATIVE REVIEW

- Section
- 1650.610 Staff Responsibility
- 1650.620 Right of Appeal
- 1650.630 Form of Written Request
- 1650.635 Presiding Hearing Officer – Duties and Responsibilities
- 1650.640 Prehearing Procedure
- 1650.641 Claims Hearing Committee Hearing Packet
- 1650.650 Hearing Procedure
- 1650.660 Rules of Evidence (Repealed)

SUBPART I: AMENDMENTS TO BYLAWS AND RULES

- Section
- 1650.710 Amendments

SUBPART J: RULES OF ORDER

- Section
- 1650.810 Parliamentary Procedure

SUBPART K: FREEDOM OF INFORMATION ACT REQUESTS

Section

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1650.910	Summary and Purpose
1650.920	Definitions
1650.930	Submission of Requests
1650.940	Form and Content of FOIA Requests
1650.950	Appeal of a Denial
1650.960	Executive Director's Response to Appeal
1650.970	Response to FOIA Requests
1650.980	Inspection of Records at System Office
1650.990	Copies of Public Records
1650.995	Materials Available Under Section 4 of FOIA

SUBPART L: BOARD ELECTION PROCEDURES

Section

1650.1000	Nomination of Candidates
1650.1001	Elections Date/Election Day – Defined
1650.1010	Petitions
1650.1020	Eligible Voters
1650.1030	Election Materials
1650.1040	Marking of Ballots
1650.1050	Return of Ballots
1650.1060	Observation of Ballot Counting
1650.1070	Certification of Ballot Counting
1650.1080	Challenges to Ballot Counting
1650.1090	Special Election to Fill Un-Expired Term of Elected Trustee

SUBPART M: QUALIFIED ILLINOIS DOMESTIC RELATIONS ORDERS

Section

1650.1110	Definitions
1650.1111	Requirements for a Valid Qualified Illinois Domestic Relations Order
1650.1112	Requirements for a Valid QILDRO Calculation Order
1650.1113	Required Forms
1650.1114	Filing a QILDRO or a Calculation Order with the System
1650.1115	Benefits Affected by a QILDRO
1650.1116	Effect of a Valid QILDRO
1650.1117	QILDROs Against Persons Who Became Members Prior to July 1, 1999
1650.1118	Alternate Payee's Address
1650.1119	Electing Form of Payment

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- 1650.1120 Automatic Annual Increases
- 1650.1121 Reciprocal Systems QILDRO Policy Statement (Repealed)
- 1650.1122 Providing Benefit Information for Divorce Purposes
- 1650.1123 Suspension and Expiration of a QILDRO
- 1650.1124 Income Tax Reporting
- 1650.1125 Lump-Sum Death Benefit Allocation to Alternate Payee

SUBPART N: PAYROLL DEDUCTION PROGRAM

Section

- 1650.1200 Payroll Deduction Program Guidelines
- 1650.1201 Employer Responsibility Under the Payroll Deduction Program
- 1650.1202 Payroll Deduction Agreements – Suspensions and Terminations
- 1650.1203 Payroll Deduction Program – Full Time Employment Defined
- 1650.1204 Payroll Deduction Program – Disability Defined
- 1650.1205 Employer Payment of Member's Optional Service, Refund and/or Upgrade Contribution Balance

SUBPART O: RETIREMENT BENEFITS

Section

- 1650.2900 Excess Benefit Arrangement

AUTHORITY: Implementing and authorized by Articles 1 and 16 of the Illinois Pension Code [40 ILCS 5/Arts. 1 and 16]; Freedom of Information Act [5 ILCS 140]; Internal Revenue Code (26 USC 1 et seq.); Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].

SOURCE: Filed June 20, 1958; emergency rules adopted at 2 Ill. Reg. 49, p. 249, effective November 29, 1978, for a maximum of 150 days; adopted at 3 Ill. Reg. 9, p. 1, effective March 3, 1979; codified at 8 Ill. Reg. 16350; amended at 9 Ill. Reg. 20885, effective December 17, 1985; amended at 12 Ill. Reg. 16896, effective October 3, 1988; amended at 14 Ill. Reg. 18305, effective October 29, 1990; amended at 15 Ill. Reg. 16731, effective November 5, 1991; amended at 17 Ill. Reg. 1631, effective January 22, 1993; amended at 18 Ill. Reg. 6349, effective April 15, 1994; emergency amendment at 18 Ill. Reg. 8949, effective May 24, 1994, for a maximum of 150 days; emergency modified at 18 Ill. Reg. 12880; amended at 18 Ill. Reg. 15154, effective September 27, 1994; amended at 20 Ill. Reg. 3118, effective February 5, 1996; emergency amendment at 21 Ill. Reg. 483, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 2422, effective January 31, 1997; amended at 21 Ill. Reg. 4844, effective March 27, 1997; emergency amendment at 21 Ill. Reg. 17159, effective December 9,

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1997, for a maximum of 150 days; amended at 22 Ill. Reg. 7243, effective April 9, 1998; emergency amendment at 22 Ill. Reg. 7314, effective April 9, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 9374, effective May 14, 1998, for a maximum of 150 days; emergency rule modified in response to JCAR Objection at 22 Ill. Reg. 11640; emergency amendment at 22 Ill. Reg. 13151, effective June 29, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 15620, effective August 17, 1998; amended at 22 Ill. Reg. 19079, effective October 1, 1998; amended at 22 Ill. Reg. 22090, effective December 1, 1998; amended at 23 Ill. Reg. 3079, effective February 23, 1999; amended at 24 Ill. Reg. 2440, effective January 27, 2000; amended at 24 Ill. Reg. 10300, effective June 26, 2000; amended at 25 Ill. Reg. 203, effective December 22, 2000; amended at 26 Ill. Reg. 2758, effective February 11, 2002; amended at 26 Ill. Reg. 11476, effective July 11, 2002; amended at 27 Ill. Reg. 1668, effective January 17, 2003; amended at 27 Ill. Reg. 9209, effective May 28, 2003; amended at 28 Ill. Reg. 10055, effective June 29, 2004; amended at 29 Ill. Reg. 1546, effective January 14, 2005; amended at 29 Ill. Reg. 13244, effective August 9, 2005; amended at 30 Ill. Reg. 194, effective December 23, 2005; amended at 30 Ill. Reg. 472, effective December 21, 2005; amended at 30 Ill. Reg. 11728, effective June 23, 2006; amended at 30 Ill. Reg. 17525, effective October 18, 2006; amended at 31 Ill. Reg. 10688, effective July 13, 2007; amended at 32 Ill. Reg. 4073, effective February 28, 2008; amended at 32 Ill. Reg. 7979, effective May 6, 2008; amended at 32 Ill. Reg. 13534, effective August 6, 2008; amended at 33 Ill. Reg. 4401, effective March 3, 2009; amended at 33 Ill. Reg. 15863, effective November 2, 2009.

SUBPART E: CONTRIBUTION CREDITS AND PAYMENTS

Section 1650.417 Mandatory Distributions Pursuant to Section 401(a)(9) of the Internal Revenue Code

When the System is required to make a mandatory distribution pursuant to section 401(a)(9) of the Internal Revenue Code and the member is eligible to receive either a single-sum benefit under 40 ILCS 5/16-136.4 or a refund under 40 ILCS 5/16-151, but fails to make the required election, the member shall be deemed to have elected a refund under 40 ILCS 5/16-151.

(Source: Added at 33 Ill. Reg. 15863, effective November 2, 2009)

Section 1650.450 Compensation Recognized As "Salary"

- a) "Salary" means any form of creditable compensation received by a member in consideration of services rendered as a teacher, subject to all applicable limits and restrictions imposed on qualified plans under the Internal Revenue Code.
"Salary" directly related to specific work performed during a school year is

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recognized on an accrual basis. Other creditable compensation is recognized on a cash basis. The System reserves the right to determine the year of salary recognition. The following common examples are for illustration only and do not limit the System's right to evaluate and determine other forms of creditable and non-creditable compensation.

- b) Examples of creditable compensation recognized as "salary":
- 1) The gross amount of compensation earned or accruing to the member during the school year in a function requiring certification as a teacher.
 - 2) Additional compensation earned during the school year for the performance of extra duties, not requiring teacher certification, but which involve the supervision of students or are related to the academic program, provided the member is employed as a full-time or part-time contractual teacher and establishes active service credit in that position during the school year.
 - 3) The amount of back salary awarded to a member as a result of a settlement or judgment obtained due to a disputed dismissal, suspension or demotion. Court costs, attorney's fees, other compensatory damages and punitive damages shall not be reportable as salary. The back salary amount reported to the System under this Section shall be equal to the amount the member would have earned had the dispute not occurred, regardless of the actual amount paid.
 - 4) Lump-sum payments (e.g., retirement incentives, bonuses, payments for unused vacation and sick days) received by the member or becoming due and payable to the member prior to or concurrent with receipt of final paycheck for regular earnings.
 - 5) Contributions made by or on behalf of the member to qualified deferred compensation plans (sections 401(a) and 457(b) of the Internal Revenue Code), salary reduction plans or tax sheltered annuities under section 403(b) of the Internal Revenue Code.
 - 6) Amounts that would otherwise qualify as salary under subsections (b)(1) through (b)(5) but are not received directly by the member because they are used to finance benefit options in a flexible benefit plan; provided,

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however, that to be reportable, a flexible benefit plan cannot include non-qualifying deferred compensation. For the System's purposes, a flexible benefit plan is an option offered by an employer to its employees covered under the System to receive an alternative form of creditable compensation in lieu of employer-provided insurance.

- c) Examples of non-creditable compensation not recognized as "salary":
- 1) Lump-sum payments (e.g., retirement incentives, bonuses, payments for unused vacation and sick days) becoming due and payable to the member subsequent to receipt of final paycheck for regular earnings.
 - 2) Any lump sum payment made after the death of the member.
 - 3) Expense reimbursements, expense allowances, or fringe benefits unless included in a reportable flexible benefit plan.
 - 4) Any monies received by the member under the Workers' Compensation Act or the Workers' Occupational Diseases Act.
 - 5) Compensation for extra duties not requiring teacher certification performed by substitute and part-time non-contractual teachers.
 - 6) Any amount paid in lieu of discontinued or decreased non-reportable benefits, or reported in lieu of previously non-reported compensation, where the conversion occurs in the member's final seven years of service. If any form of non-creditable or non-reported compensation in any of the member's last seven creditable school years of employment exceeds that of any other subsequent year, the System will presume the difference to have been converted into salary in the subsequent year. To overcome the presumption, the member must submit documentary evidence to the System that clearly and convincingly proves that the change in compensation structure was due to a change in a collectively bargained agreement applicable to all individuals covered by the agreement, a change in employer policies affecting a group of similarly situated members some of whom are not within seven years of retirement eligibility, or a change in family status, and not to increase final average salary.

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- 7) Any amount paid by an employer as the employer's one time contribution (or on behalf of the employee as the employee's one-time contribution) required by the System as part of the statutory early retirement option in Section 16-133.2 of the Act.
- 8) Options to take salary in lieu of employment-related expense allowances or reimbursements.
- 9) Employer payment of the member's Teachers Health Insurance Security Fund contribution.
- 10) Commissions (i.e., payments to a member based upon a percentage formula).
- 11) Contributions to and distributions from nonqualified deferred compensation arrangements, provided the employer furnishes the System an Internal Revenue Service determination letter confirming that the nonqualified deferred compensation arrangement is valid under IRC 457(f).
- 12) Employer contributions to and distributions from medical spending accounts.

(Source: Amended at 33 Ill. Reg. 15863, effective November 2, 2009)

Section 1650.470 Rollover Distributions

- a) An eligible recipient entitled to receive a refund of contributions, lump-sum benefit, or other nonperiodic distribution from the System may elect, subject to the provisions of this Section, to have all or a portion of the distribution~~the taxable portion thereof~~ paid in a direct rollover from the System to an eligible retirement plan designated in writing by the eligible recipient; provided, however, that any portion thereof which is a required distribution pursuant to any applicable provision of the Internal Revenue Code is not payable in a direct rollover. A distribution made to correct a failed nondiscrimination test or because legal limits on certain contributions were exceeded cannot be rolled over.
- b) If the ~~taxable portion of the~~ distribution from the System is less than \$200, it is not payable in a direct rollover.

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- c) If the ~~taxable portion of the~~ distribution from the System is at least \$200 but less than \$500, the entire sum must either be paid in a single direct rollover or to the eligible recipient.
- d) If the ~~taxable portion of the~~ distribution is greater than \$500, the eligible recipient may have a portion thereof paid to him or her and the balance paid in a direct rollover; provided, however, that the direct rollover must be at least \$500.
- e) Multiple direct rollovers from the System to more than one eligible retirement plan are not allowed.
- f) An "eligible retirement plan" for purposes of this Section means:
- 1) A plan described ~~is~~ in 26 USC 402(c)(~~82~~)(B), which includes:
 - A) An individual retirement account described in 26 USC 408(a);
 - B) An individual retirement annuity described in 26 USC 408(b) (other than an endowment contract);
 - C) A qualified trust under 26 USC 401(a);
 - D) An annuity plan described in 26 USC 403(a);
 - E) An eligible deferred compensation plan described in 26 USC 457(b) that is maintained by an eligible employer described in 26 USC 457(e)(1)(A);
 - F) An annuity contract described in 26 USC 403(b); and
 - G) Pursuant to 26 USC 408A(c)(6) and (e)(1), a Roth IRA as defined in 26 USC 408A(b).
 - 2) Any other type of plan that is designated as an eligible retirement plan by federal law.
- g) A "direct rollover" for purposes of this Section is a payment by the System to an eligible retirement plan specified by the eligible recipient as provided in

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subsection (a) of this Section.

- h) An "eligible recipient" for purposes of this Section is:
- 1) A member of the System as defined in Section 16-107 of the Illinois Pension Code [40 ILCS 5/16-107];
 - 2) An alternate payee under a valid Qualified Illinois Domestic Relations Order (QILDRO) on file with the System in accordance with Section 1-119 of the Illinois Pension Code [40 ILCS 5/1-119], as allowed by 26 USC 402(e)(1)(B);
 - 3) A member's surviving spouse, as allowed by 26 USC 402(c)(9); or
 - 4) A non-spouse beneficiary, as defined in 26 USC 401(a)(9)(E), of a deceased member, provided the distribution is rolled to an individual retirement plan that is treated as an inherited individual retirement account or individual retirement annuity pursuant to 26 USC 402(c)(11). ~~or~~
 - 3) As allowed by 26 USC 402.
- i) If the eligible recipient elects a direct rollover from the System as provided in this Section, the eligible recipient shall certify in writing the following:
- 1) That he or she has read the "Special Tax Notice Regarding Payments from TRS"; and
 - 2) That the direct rollover is being made into an eligible retirement plan as defined in subsection (f) of this Section ~~by 26 USC 402(f)(2)(B)~~.
- j) If the eligible recipient elects a direct rollover from the System as provided in this Section, the eligible recipient shall identify the type of eligible retirement plan to which the direct rollover is being made and shall obtain the certification in writing of the entity that is to receive the direct rollover as to the following:
- 1) That the entity receiving the direct rollover is legally eligible to receive such direct rollover;
 - 2) That the entity receiving the direct rollover has agreed to accept such

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- direct rollover; and
- 3) That the direct rollover is being made to an eligible retirement plan as defined in subsection (f) of this Section; ~~and~~
 - 4) ~~Identifying the type of eligible retirement plan to which the direct rollover is being made.~~
- k) In order to receive payment from the System in a direct rollover pursuant to this Section, the System must receive from the eligible recipient all of the following together, in the form or forms prescribed by the System:
- 1) An application for lump-sum distribution;
 - 2) A rollover election;
 - 3) A certification from the eligible recipient as provided above in subsection (i) of this Section; and
 - 4) A certification from the entity receiving the direct rollover as provided ~~above~~ in subsection (j) of this Section.
- l) Payments from the System that are part of a series of equal or substantially equal periodic payments made at least once a year cannot be paid in a direct rollover, if ~~thesuch~~ payments will last for:
- 1) The life or life expectancy of the person entitled to receive ~~thesuch~~ payments;
 - 2) The lives or joint life expectancies of the person entitled to receive ~~thesuch~~ payments and that person's beneficiary; or
 - 3) A period of ten years or more; ~~or~~
 - 4) ~~A period that represents any type of disability payment.~~

(Source: Amended at 33 Ill. Reg. 15863, effective November 2, 2009)

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- 1) Heading of the Part: Selection of Architectural, Engineering and Land Surveying Services
- 2) Code Citation: 44 Ill. Adm. Code 625
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
625.20	Amend
625.90	Amend
- 4) Statutory Authority: Implementing Sections 5, 10, 20, 25, 30, 35, 40, 45, 50 and 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535/5, 10, 20, 25, 30, 35, 40, 45, 50 and 55]; Section 35 of the Illinois Aeronautics Act [620 ILCS 5/35]; Section 4-201.4 of the Illinois Highway Code [605 ILCS 5/4-201.4]; and Section 2705-240 of the Civil Administrative Code of Illinois [20 ILCS 2705/2705-240] and authorized by Section 10 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535/10]; Section 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-201.1] and Section 5-625 of the Civil Administrative Code of Illinois [20 ILCS 5/5-625]
- 5) Effective Date of Amendments: October 30, 2009
- 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 amendments, including any material incorporated by reference, is on file in the agency's Division of Highways and Office of Chief Counsel and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 24, 2009; 33 Ill. Reg. 11079
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: A punctuation change was made in agreement with JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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- 13) Will this rulemaking replace any emergency rulemaking currently in effect? Yes
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: The Illinois Department of Transportation (the Department) has amended Section 625.20 by updating the applicability provisions, which were out-of-date and problematic, and Section 625.90 by increasing membership of the Selection Committee from six to seven. Under the adopted amendments, the Deputy Secretary of Transportation, or his/her designee, will serve as member and chairperson of the seven-member Selection Committee; three of the remaining six members will be from the Department; the other three members will be from the public and shall be licensed in the profession affected, one being appointed by the Secretary of Transportation and the other two by the Illinois Society of Professional Engineers. Public members may not be employed by, associated with, or have an ownership interest in any firm holding or seeking to hold a contract with the Department while serving as a public member of the Selection Committee. The Selection Committee will include two or more representatives of the State's geographic, ethnic, and cultural diversity, including persons nominated by associations representing minority and female-owned business associations. When another governmental body or bodies is or are contributing to the funding of a particular contract, the Department may, in its discretion, permit the other governmental body or bodies to provide one or more representatives who will serve as a member or members of the Selection Committee with a total of one vote (or a fractional vote as may be prescribed by the Department) potentially resulting in a total Selection Committee membership of more than seven and a total number of votes in excess of seven, with respect to the affected services.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Ms Cheryl Cathey, Chief
Preliminary Engineering Section
Illinois Department of Transportation
Division of Highways
2300 S. Dirksen Parkway, Room 330
Springfield, Illinois 62764

217/782-7557

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

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT
AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER IX: DEPARTMENT OF TRANSPORTATION

PART 625

SELECTION OF ARCHITECTURAL, ENGINEERING AND LAND SURVEYING
SERVICES~~ARCHITECT ENGINEER CONSULTANT FIRMS~~

Section

625.10	Purpose
625.20	Applicability
625.30	Equal Employment Opportunity; Nondiscrimination; Affirmative Action
625.40	Prequalification
625.50	Solicitation
625.60	Statements of Interest
625.70	Confirmation of Eligibility
625.80	Preliminary Review and Ranking
625.90	Consultant Selection Committee
625.100	Selection
625.110	Notification of Selections
625.120	Negotiations
625.130	Waivers, Modifications
625.140	Complaint Procedure

AUTHORITY: Implementing Sections 5, 10, 20, 25, 30, 35, 40, 45, 50 and 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535/5, 10, 20, 25, 30, 35, 40, 45, 50 and 55]; Section 35 of the Illinois Aeronautics Act [620 ILCS 5/35]; Section 4-201.4 of the Illinois Highway Code [605 ILCS 5/4-201.4]; and Section 2705-240 of the Civil Administrative Code of Illinois [20 ILCS 2705/2705-240] and authorized by Section 10 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535/10]; Section 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-201.1] and Section 5-625 of the Civil Administrative Code of Illinois [20 ILCS 5/5-625].

SOURCE: Adopted at 5 Ill. Reg. 9143, effective September 1, 1981; codified at 8 Ill. Reg. 17988; emergency amendment at 33 Ill. Reg. 11127, effective July 7, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 15878, effective October 30, 2009.

Section 625.20 Applicability

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- a) **General**
The requirements of this Part are applicable to all architectural, ~~or~~ engineering and land surveying consulting services provided to the Department pursuant to contract unless provided otherwise in this Part. This Part ~~is and 44 Ill. Adm. Code 635 (Selection of Non-Architect-Engineering-Consultant Firms) are~~ intended to cover all services acquired pursuant to the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act (the Act) [30 ILCS 535], Section 6 (a)(2) of the Illinois Purchasing Act unless specifically excluded under this Part and 44 Ill. Adm. Code 635 or unless specifically covered by another applicable law or regulation.
- b) **Small Contracts**
~~Sections 625.50, 625.80 and 625.100 do not apply to architectural, engineering and land surveying contracts with an estimated basic professional services fee of less than \$25,000. (See Section 45 of the Act.) Transferred Coverage In a limited number of instances, contracts normally covered by 44 Ill. Adm. Code 635 may instead, with the written consent of the Secretary of Transportation, be let pursuant to this Part. The Secretary of Transportation may grant such consent for reasons including but not limited to the following: 1) where the nature of the services is not nominally covered by this Part but is so closely related that it is appropriate to select a consultant providing such services on the same basis as architect-engineer services or 2) where the participation of other governmental bodies in the financing of a contract is such that this Part would permit more appropriate input from such bodies. In any event, the written consent of the Secretary of Transportation shall include an explanation of the reason or reasons that this Part is to be utilized instead of 44 Ill. Adm. Code 635. The Secretary of Transportation's written consent shall constitute a waiver of the requirements of 44 Ill. Adm. Code 635.~~
- c) **Emergency Services**~~Certain Limited Exemptions~~
~~Sections 625.50, 625.80 and 625.100 do not apply in the procurement of architectural, engineering and land surveying services by the Department when the Department determines in writing that it is in the best interest of the State to proceed with the immediate selection of a firm, or in emergencies when immediate services are necessary to protect the public health and safety, including, but not limited to, earthquake, tornado, storm, or natural or man-made disaster. (See Section 50 of the Act.) This Part is applicable to contracts estimated to total \$5,000 or less. Provided, however, that the Department's Bureau of Land~~

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~~Acquisition is not subject to the specific requirements of this Part when a contract otherwise covered by this Part is estimated to total \$5,000 or less, and is for services obtained in conjunction with the acquisition of an interest, temporary or permanent, in real property. In other instances, a requesting Division may request a similar exemption where the delay involved in advertising, preparing the statement of interest, evaluating the statements and convening the Selection Committee would prove too costly, would prevent the accomplishment of the work within the scheduled time frame, or both; such an exemption, if made, shall be written, shall set forth the reasons for its issuance, and be approved by the Secretary. Even under an exempt contract, however, it is the responsibility of the Director of the Division or Office acquiring such services to assure that acquisition is made in a manner consistent with good governmental procurement practices. This Part is not applicable to the selection of an individual required to perform for the Department work similar in nature and method of assignment as that which is ordinarily assigned to an employee of the Department; provided, however, that the selection of any individual to perform such work shall be subject to any other applicable rules or policies.~~

(Source: Amended at 33 Ill. Reg. 15878, effective October 30, 2009)

Section 625.90 Consultant Selection Committee

- a) Chairperson
The Deputy Secretary of Transportation, or ~~his/her designee, such other person as may be designated by the Secretary~~ shall serve as member and chairperson of a ~~seven~~six-member Consultant Selection Committee. (~~Sometimes referred to as "Selection Committee" or "Committee"~~).
- b) Department Members
 - 1) Three of the remaining ~~six~~five members of the Committee shall be from the Department. Specifically, they shall be:
 - A) the Director of the requesting Division or Office, or ~~his/her~~that ~~Director's~~ designee;
 - B) the ~~Regional District~~ Engineer (or his/~~her~~ designee) or the Bureau Chief (or his/~~her~~ designee) from the same Division or Office, as designated by the Director;

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- C) the Director of the Office of Planning and Programming, or his/her designee.
- 2) In the event that the Office requesting the services is the Office of Planning and Programming, the Committee shall meet and operate as normal except that, for purposes of the affected services the Director of Planning and Programming shall have only one vote and the Committee shall have only sixfive members and sixfive votes.
- c) Public Members
The other threetwo members of the Committee shall be from the public and shall have professional experience in transportation or engineering. One shall be appointed by the Secretary of Transportation and the other two by the Illinois Society of Professional Engineers (ISPE). Each public member shall be appointed for a term of two years. If a public member does not complete the term, another member shall be appointed by the Secretary or the ISPE (in accordance with the original appointment) to serve the remainder of the uncompleted term. Public members may not be employed by, associated with or have an ownership interest in any firm holding or seeking to hold a contract with the Department while serving as a public member of the Committee.
- d) It is the goal of the Department that the membership of the Committee reflect the ethnic and cultural diversity of the population of Illinois. In furtherance of this goal, the Department has a goal that two or more members of the Committee be females or minorities. Additionally, the Department has a goal that the Committee's membership reflect the geographic diversity of the population of Illinois.
- ed) Committee Secretary
The Chief of the Consultant Services Unit shall serve as Secretary of the Committee but shall not have the power to vote.
- fe) Meetings; Quorum
The Selection Committee shall meet when called by its Chairperson. In order to conduct business the Selection Committee must have a quorum. A quorum shall consist of at least four members, at least one of whom must be a public member.
- gf) Participation of Other Governmental Bodies

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Where another governmental body or bodies is ~~or are~~(are) contributing to the funding of a particular contract, the Department may, ~~in its discretion, at its option~~ take either of the following two actions:

- 1) Permit ~~the each such other~~ governmental body or bodies to provide one or more representatives who will serve as ~~a member or members~~member(s) of the Selection Committee with a total of one vote (or ~~a such~~ fractional vote, as may be prescribed by the Department). In some instances, this option may result in a total Selection Committee membership of more than ~~sevensix~~ and a total number of votes in excess of ~~sevensix~~, with respect to the affected services.
- 2) Select a number of consultants (normally 3) in the normal manner, except ~~the such~~ selection shall be ~~in~~with no order of preference; the Department may then permit the governmental body or bodies to select one consultant from that group selected by the Selection Committee.

(Source: Amended at 33 Ill. Reg. 15878, effective October 30, 2009)

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NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Roadside Memorials
- 2) Code Citation: 92 Ill. Adm. Code 549
- 3) Section Number: 549.300 Adopted Action:
Amend
- 4) Statutory Authority: Implementing, and authorized by Section 25 of, the Roadside Memorial Act [605 ILCS 125]
- 5) Effective Date of Amendment: October 30, 2009
- 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 amendment, including any material incorporated by reference, is on file in the agency's Division of Highways and Office of Chief Counsel and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 17, 2009; 33 Ill. Reg. 10207
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Differences between proposal and final version: At Section 549.300(f), the Department is striking "within a 5-year period preceding the request beginning with crashes occurring" in agreement with 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 any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of the Amendment: This Part provides for the placement of roadside markers to commemorate the deaths of persons killed in crashes involving impaired drivers. The purpose of the program is to raise public awareness of impaired driving by emphasizing the dangers while affording families an opportunity to remember

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the victims. The authorizing statute provides that the Department may place markers with the message, "Please don't Drink and Drive", along with a plaque bearing the name of the victim and the date of the crash, at the location of the crash or at an alternate location. Both the statute and the rule provide that the victims' families are responsible for the costs of the markers and plaques.

By this adopted rulemaking, the Department has amended Section 549.300(f) by changing a provision concerning the date the crash occurred. Under Public Act 95-873, effective August 21, 2008, the date changed from "on or after January 1, 2003" to "on or after January 1, 1990".

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

Mr. Aaron Weatherholt, Acting Engineer of Operations
Illinois Department of Transportation
Division of Highways
2300 South Dirksen Parkway, Room 009
Springfield, Illinois 62764

217/782-2076

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

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENT

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER f: HIGHWAYSPART 549
ROADSIDE MEMORIALS

Section

549.100	Introduction
549.200	Definitions
549.300	Criteria for DUI Memorial Markers and Commemorative Plaques
549.400	Design of DUI Memorial Markers and Commemorative Plaques
549.500	Application, Fees and Other Regulations
549.APPENDIX A	District Offices and Counties

AUTHORITY: Implementing, and authorized by Section 25 of, the Roadside Memorial Act [605 ILCS 125].

SOURCE: Adopted at 32 Ill. Reg. 8047, effective May 8, 2008; amended at 33 Ill. Reg. 15885, effective October 30, 2009.

Section 549.300 Criteria for DUI Memorial Markers and Commemorative Plaques

- a) Only a qualified relative of a deceased victim may request a DUI memorial marker of the Department. (See Section 15(a) of the Act.)
- b) The Department shall deny the request if any qualified relative of any decedent involved in the crash objects in writing to the placement of the DUI memorial marker. (See Section 15(c) of the Act.)
- c) The Department shall deny the request or, if a DUI memorial marker has already been installed, may remove the marker, if the qualified relative requesting a DUI memorial marker has provided false or misleading information in the application. (See Section 15(d) of the Act)
- d) *The qualified relative shall agree not to place or encourage the placement of flowers, pictures or other items at the crash site.* (Section 15(e) of the Act)

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- e) The Department shall not erect a DUI memorial marker for a deceased driver involved in a fatal crash who is shown by toxicology reports to have been in violation of state DUI law, unless the qualified relative of any other victim or victims killed in the crash consents in writing to the erection of the memorial. (See Section 15(f) of the Act)
- f) When requested and approved, DUI memorial markers may be installed for any crash occurring ~~within a 5 year period preceding the request beginning with crashes occurring~~ on or after January 1, ~~1990~~2003. (See Section 15(b) of the Act.)
- g) DUI memorial markers shall not be installed on freeways except that they may be installed on ramps leading from other highways to freeways.
- h) DUI memorial markers shall not be installed within the median of any divided highway.

(Source: Amended at 33 Ill. Reg. 15885, effective October 30, 2009)

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NOTICE OF EMERGENCY AMENDMENTS

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

<u>Section Numbers:</u>	<u>Emergency Action:</u>
50.230	Amendment
50.320	Amendment
- 4) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13]
- 5) Effective date of Amendments: November 1, 2009
- 6) If these emergency amendments are to expire before the end of the 150-day period, please specify the date on which they are to expire: These emergency amendments will expire at the end of the 150-day period, or upon adoption of permanent rules, whichever comes first.
- 7) Date filed with the Index Department: October 29, 2009
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: This emergency rulemaking is being proposed to make use of American Recovery and Reinvestment (ARRA) funds. This rulemaking is the result of a sub-group of the Child Care Advisory Council that was formed to discuss and make recommendations to the Department on possible uses of ARRA funds. This rulemaking lowers co-payments fees by 15% for all families eligible for child care assistance. Not reducing the child care co-payment fees would threaten the welfare of eligible families. This rulemaking addresses the threat by reducing the child care co-payment fees and allowing eligible families to pay less for their child care which will help eligible families during these economic times.
- 10) A complete description of the subject and issues: This rulemaking is being proposed to establish that during the period of November 1, 2009 through September 30, 2011, or as long as American Recovery and Reinvestment Act (ARRA) funds are available, the child care co-payment fees will be reduced by 15%. This rulemaking is also being proposed to bring the income guidelines up to the same level as the TANF benefit services level that is 200% of the federal poverty level and is within the current child care operating budget.

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This rulemaking increases the monthly income thresholds so that low-income families will remain eligible for child care assistance longer and more new families will be eligible to receive care. Increasing the income thresholds helps stabilize job retention and allows a parent to accept some raises and promotions without fear of losing their child care. This proposed rulemaking will also affect child care providers by helping them to keep their enrollment numbers up.

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

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
50.230	Amendment	33 Ill. Reg. 7258; June 5, 2009
50.320	Amendment	33 Ill. Reg. 7258; June 5, 2009

- 12) Statement of statewide policy objective: This rulemaking does not create or expand a State mandate.

- 13) Information and questions regarding these emergency amendments shall be directed to:

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

217/785-9772

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY 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
 - 50.110 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
 - EMERGENCY**
 - 50.235 Income Eligibility Criteria
 - 50.240 Qualified Provider
 - 50.250 Additional Service to Secure or Maintain Child Care

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

EMERGENCY

SUBPART D: CHILD CARE ABUSE AND NEGLECT

- Section
- 50.410 Provider Eligibility
 - 50.420 Payment for Child Care Services

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NOTICE OF EMERGENCY AMENDMENTS

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

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

SOURCE: Emergency rules adopted at 21 Ill. Reg. 9502, effective July 1, 1997, for a maximum of 150 days; adopted at 21 Ill. Reg. 14961, effective November 10, 1997; emergency amendment at 22 Ill. Reg. 12816, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 21037, effective November 27, 1998; emergency amendment at 23 Ill. Reg. 10875, effective August 20, 1999, for maximum of 150 days; amended at 24 Ill. Reg. 1058, effective January 10, 2000; emergency amendment at 24 Ill. Reg. 6604, effective April 5, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 13987, effective September 1, 2000; amended at 24 Ill. Reg. 15423, effective October 10, 2000; emergency amendment at 25 Ill. Reg. 2735, effective February 5, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 8176, effective June 23, 2001; emergency amendment at 25 Ill. Reg. 8443, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 14854, effective October 31, 2001; emergency amendment at 25 Ill. Reg. 16116, effective December 1, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 7113, effective April 25, 2002; amended at 27 Ill. Reg. 12090, effective July 14, 2003; amended at 27 Ill. Reg. 18411, effective November 24, 2003; amended at 28 Ill. Reg. 6895, effective April 23, 2004; emergency amendment at 28 Ill. Reg. 10121, effective July 1, 2004, for a maximum of 150 days; emergency expired November 27, 2004; amended at 29 Ill. Reg. 2687, effective February 4, 2005; emergency amendment at 29 Ill. Reg. 13253, effective August 11, 2005, for a maximum of 150 days; emergency expired January 7, 2006; amended at 30 Ill. Reg. 11190, effective June 6, 2006; amended at 31 Ill. Reg. 12584, effective August 20, 2007; emergency amendment at 31 Ill. Reg. 13350, effective September 10, 2007, for a maximum of 150 days; emergency expired February 6, 2008; amended at 32 Ill. Reg. 6048, effective March 31, 2008; emergency amendment at 32 Ill. Reg. 6652, effective April 1, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 9604, effective June 20, 2008; amended at 32 Ill. Reg. 14742,

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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.

SUBPART B: APPLICABILITY

Section 50.230 Child Care Eligibility

EMERGENCY

- 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.
- 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 training activities as specified in their 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 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 Income
2	\$2,429 <u>2,334</u>
3	\$3,052 <u>2,934</u>
4	\$3,675 <u>3,534</u>
5	\$4,299 <u>4,134</u>
6	\$4,922 <u>4,734</u>
7	\$5,545 <u>5,334</u>
8	\$6,169 <u>5,934</u>

The above income eligibility guidelines are set at 200% of the most current federal poverty level for each family size. The above income

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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'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, 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. 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, 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.

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
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
This category of education includes all undergraduate college level courses that result in an Associate's or Bachelor's Degree. Families eligible to receive child care services while they attend an education or training program under this Section must:

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- i) be enrolled in a program accredited under requirements of State law as stated in subsection (b)(3) of this Section.
- ii) not already have an Associate's or Bachelor's Degree, if requesting child care to earn an Associate's Degree. Child care will not be approved for attainment of a second Associate's Degree.
- iii) 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.
- iv) 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.

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 cumulative 2.5 grade point average (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 cumulative 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 cumulative GPA falls below 2.5 or 2.0 for those students who work or at any time the client does not maintain satisfactory progress, the client may continue to go to school for another semester. If the cumulative 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

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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 hour 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 additional days of care.
- 4) Relatives (other than parents) who receive child-only TANF or General Assistance (GA) benefits as Representative Payee for children in need of care while they work outside the home.
- 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

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- 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.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 15889, effective November 1, 2009, for a maximum of 150 days)

SUBPART C: PAYMENT FEES

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

EMERGENCY

Family Size 2

Monthly Income	1 Child Monthly Co-Pay	1 Child Weekly Co-Pay
\$ 0 - 327	\$ 3.68 4.33	\$ 1.00
328 - 491	11.05 13.00	3.00
492 - 654	18.42 21.67	5.00
655 - 818	29.46 34.66	8.00
819 - 981	40.51 47.66	11.00
982 - 1,145	55.25 65.00	15.00
1,146 - 1,308	73.66 86.66	20.00
1,309 - 1,472	92.08 108.33	25.00
1,473 - 1,636	114.17 134.32	31.00
1,637 - 1,799	136.27 160.32	37.00
1,800 - 1,962	158.37 186.32	43.00
1,963 - 2,125	180.47 212.32	49.00
2,126 - 2,288	202.57 238.32	55.00
2,289 - 2,429 2,334	224.67 264.31	61.00

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Family Size 3

Monthly Income	1	1	2	2
	Child Monthly Co-Pay	Child Weekly Co-Pay	Children Monthly Co-Pay	Children Weekly Co-Pay
\$ 0 - 423	\$ <u>3.68</u> 4.33	\$ <u>1.00</u>	\$ <u>7.37</u> 8.67	\$ <u>2.00</u>
424 - 606	<u>11.05</u> 13.00	3.00	<u>14.73</u> 17.33	4.00
607 - 808	<u>18.42</u> 21.67	5.00	<u>25.78</u> 30.33	7.00
809 - 1,010	<u>29.46</u> 34.66	8.00	<u>44.20</u> 52.00	12.00
1,011 - 1,212	<u>40.51</u> 47.66	11.00	<u>58.93</u> 69.33	16.00
1,213 - 1,414	<u>55.25</u> 65.00	15.00	<u>81.03</u> 95.33	22.00
1,415 - 1,616	<u>73.66</u> 86.66	20.00	<u>125.22</u> 147.32	34.00
1,617 - 1,818	<u>92.08</u> 108.33	25.00	<u>162.05</u> 190.65	44.00
1,819 - 2,020	<u>114.17</u> 134.32	31.00	<u>198.88</u> 233.98	54.00
2,021 - 2,222	<u>136.27</u> 160.32	37.00	<u>235.72</u> 277.31	64.00
2,223 - 2,424	<u>158.37</u> 186.32	43.00	<u>272.55</u> 320.64	74.00
2,425 - 2,626	<u>180.47</u> 212.32	49.00	<u>309.38</u> 363.97	84.00
2,627 - 2,828	<u>202.57</u> 238.32	55.00	<u>346.21</u> 407.30	94.00
2,829 - <u>3,030</u> 2,934	<u>224.67</u> 264.31	61.00	<u>383.04</u> 450.63	104.00
<u>3,031 - 3,052</u>	<u>246.76</u>		<u>419.87</u>	

Family Size 4

Monthly Income	1	1	2 or more	2	3	3
	Child Monthly Co-Pay	Child Weekly Co-Pay	Children Monthly Co-Pay	Children Weekly Co-Pay	Children Monthly Co-Pay	Children Weekly Co-Pay
\$ 0 - 481	\$ <u>3.68</u> 4.33	\$ <u>1.00</u>	\$ <u>7.37</u> 8.67	\$ <u>2.00</u>	\$ <u>8.67</u>	\$ <u>2.00</u>
482 - 722	<u>11.05</u> 13.00	3.00	<u>14.73</u> 17.33	4.00	17.33	4.00
723 - 962	<u>18.42</u> 21.67	5.00	<u>25.78</u> 30.33	7.00	34.66	8.00
963 - 1,203	<u>29.46</u> 34.66	8.00	<u>44.20</u> 52.00	12.00	52.00	12.00
1,204 - 1,443	<u>40.51</u> 47.66	11.00	<u>58.93</u> 69.33	16.00	73.66	17.00
1,444 - 1,684	<u>55.25</u> 65.00	15.00	<u>81.03</u> 95.33	22.00	99.66	23.00
1,685 - 1,924	<u>73.66</u> 86.66	20.00	<u>125.22</u> 147.32	34.00	151.66	35.00

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1,925 - 2,165	<u>92.08</u> 108.33	25.00	<u>162.05</u> 190.65	44.00	194.99	45.00
2,166 - 2,405	<u>114.17</u> 134.32	31.00	<u>198.88</u> 233.98	54.00	238.32	55.00
2,406 - 2,646	<u>136.27</u> 160.32	37.00	<u>235.72</u> 277.31	64.00	281.65	65.00
2,647 - 2,887	<u>158.37</u> 186.32	43.00	<u>272.55</u> 320.64	74.00	324.98	75.00
2,888 - 3,128	<u>180.47</u> 212.32	49.00	<u>309.38</u> 363.97	84.00	368.31	85.00
3,129 - 3,369	<u>202.57</u> 238.32	55.00	<u>346.21</u> 407.30	94.00	411.64	95.00
3,370 -						
<u>3,610</u> 3,534	<u>224.67</u> 264.31	61.00	<u>383.04</u> 450.63	104.00	454.97	105.00
<u>3,611 - 3,675</u>	<u>246.76</u>		<u>419.87</u>			

Family Size 5

Monthly Income	1 Child Monthly Co-Pay	1 Child Weekly Co-Pay	2 or more Children Monthly Co-Pay	2 Children Weekly Co-Pay	3 Children Monthly Co-Pay
\$ 0 - 558	\$ <u>3.68</u> 4.33	\$ 1.00	\$ <u>7.37</u> 8.67	\$ 2.00	\$ 8.67
559 - 837	<u>11.05</u> 13.00	3.00	<u>14.73</u> 17.33	4.00	17.33
838 - 1,116	<u>18.42</u> 21.67	5.00	<u>25.78</u> 30.33	7.00	34.66
1,117 - 1,395	<u>29.46</u> 34.66	8.00	<u>44.20</u> 52.00	12.00	52.00
1,396 - 1,674	<u>40.51</u> 47.66	11.00	<u>58.93</u> 69.33	16.00	73.66
1,675 - 1,953	<u>55.25</u> 65.00	15.00	<u>81.03</u> 95.33	22.00	99.66
1,954 - 2,232	<u>73.66</u> 86.66	20.00	<u>125.22</u> 147.32	34.00	151.66
2,233 - 2,511	<u>92.08</u> 108.33	25.00	<u>162.05</u> 190.65	44.00	194.99
2,512 - 2,790	<u>114.17</u> 134.32	31.00	<u>198.88</u> 233.98	54.00	238.32
2,791 - 3,069	<u>136.27</u> 160.32	37.00	<u>235.72</u> 277.31	64.00	281.65
3,070 - 3,348	<u>158.37</u> 186.32	43.00	<u>272.55</u> 320.64	74.00	324.98
3,349 - 3,627	<u>180.47</u> 212.32	49.00	<u>309.38</u> 363.97	84.00	368.31
3,628 - 3,906	<u>202.57</u> 238.32	55.00	<u>346.21</u> 407.30	94.00	411.64
3,907 -					
<u>4,185</u> 4,134	<u>224.67</u> 264.31	61.00	<u>383.04</u> 450.63	104.00	454.97
<u>4,186 - 4,299</u>	<u>246.76</u>		<u>419.87</u>		

3 Children Weekly Co-Pay	4 Children Monthly Co-Pay	4 Children Weekly Co-Pay
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\$ 2.00	\$ 8.67	\$ 2.00
4.00	21.67	5.00
8.00	34.66	8.00
12.00	56.33	13.00
17.00	77.99	18.00
23.00	103.99	24.00
35.00	155.99	36.00
45.00	199.32	46.00
55.00	242.65	56.00
65.00	285.98	66.00
75.00	329.31	76.00
85.00	372.64	86.00
95.00	415.97	96.00
105.00	459.30	106.00

Family Size 6

Monthly Income	1	1	2 or more	2	3
	Child	Child	Children	Children	Children
	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay
\$ 0 - 635	\$ 3.684.33	\$ 1.00	\$ 7.378.67	\$ 2.00	\$ 8.67
636 - 952	11.0513.00	3.00	14.7317.33	4.00	17.33
953 - 1,270	18.4221.67	5.00	25.7830.33	7.00	34.66
1,271 - 1,587	29.4634.66	8.00	44.2052.00	12.00	52.00
1,588 - 1,905	40.5147.66	11.00	58.9369.33	16.00	73.66
1,906 - 2,222	55.2565.00	15.00	81.0395.33	22.00	99.66
2,223 - 2,540	73.6686.66	20.00	125.22147.32	34.00	151.66
2,541 - 2,857	92.08108.33	25.00	162.05190.65	44.00	194.99
2,858 - 3,175	114.17134.32	31.00	198.88233.98	54.00	238.32
3,176 - 3,492	136.27160.32	37.00	235.72277.31	64.00	281.65
3,493 - 3,809	158.37186.32	43.00	272.55320.64	74.00	324.98
3,810 - 4,126	180.47212.32	49.00	309.38363.97	84.00	368.31
4,127 - 4,443	202.57238.32	55.00	346.21407.30	94.00	411.64
4,444 -					
<u>4,760-4,734</u>	<u>224.67264.31</u>	61.00	<u>383.04450.63</u>	104.00	454.97
<u>4,761 - 4,922</u>	<u>246.76</u>		<u>419.87</u>		

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	3 Children	4 Children	4 Children	5 Children	5 Children
Monthly Income	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay
\$ 0—635	\$ 2.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00
636—952	4.00	21.67	5.00	21.67	5.00
953—1,270	8.00	34.66	8.00	39.00	9.00
1,271—1,587	12.00	56.33	13.00	60.66	14.00
1,588—1,905	17.00	77.99	18.00	82.33	19.00
1,906—2,222	23.00	103.99	24.00	108.33	25.00
2,223—2,540	35.00	155.99	36.00	160.32	37.00
2,541—2,857	45.00	199.32	46.00	203.65	47.00
2,858—3,175	55.00	242.65	56.00	246.98	57.00
3,176—3,492	65.00	285.98	66.00	290.31	67.00
3,493—3,809	75.00	329.31	76.00	333.64	77.00
3,810—4,126	85.00	372.64	86.00	376.97	87.00
4,127—4,443	95.00	415.97	96.00	420.30	97.00
4,444—4,734	105.00	459.30	106.00	463.63	107.00

Family Size 7

	1 Child	1 Child	2 or more Children	2 Children	3 Children	3 Children
Monthly Income	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 649	\$ <u>3.68</u> 4.33	\$ 1.00	\$ <u>7.37</u> 8.67	\$ 2.00	\$ 8.67	\$ 2.00
650 - 974	<u>11.05</u> 13.00	3.00	<u>14.73</u> 17.33	4.00	17.33	4.00
975 - 1,299	<u>18.42</u> 21.67	5.00	<u>25.78</u> 30.33	7.00	34.66	8.00
1,300 - 1,623	<u>29.46</u> 34.66	8.00	<u>44.20</u> 52.00	12.00	52.00	12.00
1,624 - 1,948	<u>40.51</u> 47.66	11.00	<u>58.93</u> 69.33	16.00	73.66	17.00
1,949 - 2,273	<u>55.25</u> 65.00	15.00	<u>81.03</u> 95.33	22.00	99.66	23.00
2,274 - 2,598	<u>73.66</u> 86.66	20.00	<u>125.22</u> 147.32	34.00	151.66	35.00
2,599 - 2,922	<u>92.08</u> 108.33	25.00	<u>162.05</u> 190.65	44.00	194.99	45.00
2,923 - 3,247	<u>114.17</u> 134.32	31.00	<u>198.88</u> 233.98	54.00	238.32	55.00
3,248 - 3,572	<u>136.27</u> 160.32	37.00	<u>235.72</u> 277.31	64.00	281.65	65.00
3,573 - 3,897	<u>158.37</u> 186.32	43.00	<u>272.55</u> 320.64	74.00	324.98	75.00

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3,898 - 4,222	180.47 <u>212.32</u>	49.00	309.38 <u>363.97</u>	84.00	368.31	85.00
4,223 - 4,547	202.57 <u>238.32</u>	55.00	346.21 <u>407.30</u>	94.00	411.64	95.00
4,548 - 4,872	224.67 <u>264.31</u>	61.00	383.04 <u>450.63</u>	104.00	454.97	105.00
4,873 - 5,197	246.76 <u>290.31</u>	67.00	419.87 <u>493.96</u>	114.00	498.30	115.00
5,198 - 5,525.334	268.86 <u>316.31</u>	73.00	456.70 <u>537.29</u>	124.00	541.63	125.00
<u>5,523 - 5,545</u>	<u>290.96</u>		<u>493.53</u>			

Monthly Income	4-Children Monthly Co-Pay	4-Children Weekly Co-Pay	5-Children Monthly Co-Pay	5-Children Weekly Co-Pay	6-Children Monthly Co-Pay	6-Children Weekly Co-Pay
\$ 0—649	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00
650—974	21.67	5.00	21.67	5.00	21.67	5.00
975—1,299	34.66	8.00	39.00	9.00	39.00	9.00
1,300—1,623	56.33	13.00	60.66	14.00	65.00	15.00
1,624—1,948	77.99	18.00	82.33	19.00	86.66	20.00
1,949—2,273	103.99	24.00	108.33	25.00	112.66	26.00
2,274—2,598	155.99	36.00	160.32	37.00	164.65	38.00
2,599—2,922	199.32	46.00	203.65	47.00	207.98	48.00
2,923—3,247	242.65	56.00	246.98	57.00	251.31	58.00
3,248—3,572	285.98	66.00	290.31	67.00	294.64	68.00
3,573—3,897	329.31	76.00	333.64	77.00	337.97	78.00
3,898—4,222	372.64	86.00	376.97	87.00	381.30	88.00
4,223—4,547	415.97	96.00	420.30	97.00	424.63	98.00
4,548—4,872	459.30	106.00	463.63	107.00	467.96	108.00
4,873—5,197	502.63	116.00	506.96	117.00	511.29	118.00
5,198—5,334	545.96	126.00	550.29	127.00	554.62	128.00

Family Size 8

Monthly Income	1 Child Monthly Co-Pay	1 Child Weekly Co-Pay	2 or more Children Monthly Co-Pay	2 Children Weekly Co-Pay	3 Children Monthly Co-Pay	3 Children Weekly Co-Pay
\$ 0 - 664	\$ <u>3.68</u> 4.33	\$ 1.00	\$ <u>7.37</u> 8.67	\$ 2.00	\$ 8.67	\$ 2.00
665 - 996	<u>11.05</u> 13.00	3.00	<u>14.73</u> 17.33	4.00	17.33	4.00
997 - 1,328	<u>18.42</u> 21.67	5.00	<u>25.78</u> 30.33	7.00	34.66	8.00

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENTS

1,329 - 1,660	<u>29.46</u> <u>34.66</u>	8.00	<u>44.20</u> <u>52.00</u>	12.00	52.00	12.00
1,661 - 1,992	<u>40.51</u> <u>47.66</u>	11.00	<u>58.93</u> <u>69.33</u>	16.00	73.66	17.00
1,993 - 2,323	<u>55.25</u> <u>65.00</u>	15.00	<u>81.03</u> <u>95.33</u>	22.00	99.66	23.00
2,324 - 2,655	<u>73.66</u> <u>86.66</u>	20.00	<u>125.22</u> <u>147.32</u>	34.00	151.66	35.00
2,656 - 2,987	<u>92.08</u> <u>108.33</u>	25.00	<u>162.05</u> <u>190.65</u>	44.00	194.99	45.00
2,988 - 3,319	<u>114.17</u> <u>134.32</u>	31.00	<u>198.88</u> <u>233.98</u>	54.00	238.32	55.00
3,320 - 3,651	<u>136.27</u> <u>160.32</u>	37.00	<u>235.72</u> <u>277.31</u>	64.00	281.65	65.00
3,652 - 3,983	<u>158.37</u> <u>186.32</u>	43.00	<u>272.55</u> <u>320.64</u>	74.00	324.98	75.00
3,984 - 4,315	<u>180.47</u> <u>212.32</u>	49.00	<u>309.38</u> <u>363.97</u>	84.00	368.31	85.00
4,316 - 4,647	<u>202.57</u> <u>238.32</u>	55.00	<u>346.21</u> <u>407.30</u>	94.00	411.64	95.00
4,648 - 4,979	<u>224.67</u> <u>264.31</u>	61.00	<u>383.04</u> <u>450.63</u>	104.00	454.97	105.00
4,980 - 5,311	<u>246.76</u> <u>290.31</u>	67.00	<u>419.87</u> <u>493.96</u>	114.00	498.30	115.00
5,312 - 5,643	<u>268.86</u> <u>316.31</u>	73.00	<u>456.70</u> <u>537.29</u>	124.00	541.63	125.00
5,644 -						
<u>5,975</u> <u>,934</u>	<u>290.96</u> <u>342.31</u>	79.00	<u>493.53</u> <u>580.62</u>	134.00	584.96	135.00
<u>5,976 - 6,169</u>	<u>313.06</u>		<u>530.36</u>			

Monthly Income	4		5		6		7	
	Children	Children	Children	Children	Children	Children	Children	Children
	Monthly Co-Pay	Weekly Co-Pay						
\$ 0—664	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00
665—996	21.67	5.00	21.67	5.00	21.67	5.00	26.00	6.00
997—1,328	34.66	8.00	39.00	9.00	39.00	9.00	43.33	10.00
1,329—1,660	56.33	13.00	60.66	14.00	65.00	15.00	65.00	15.00
1,661—1,992	77.99	18.00	82.33	19.00	86.66	20.00	90.99	21.00
1,993—2,323	103.99	24.00	108.33	25.00	112.66	26.00	116.99	27.00
2,324—2,655	155.99	36.00	160.32	37.00	164.65	38.00	168.99	39.00
2,656—2,987	199.32	46.00	203.65	47.00	207.98	48.00	212.32	49.00
2,988—3,319	242.65	56.00	246.98	57.00	251.31	58.00	255.65	59.00
3,320—3,651	285.98	66.00	290.31	67.00	294.64	68.00	298.98	69.00
3,652—3,983	329.31	76.00	333.64	77.00	337.97	78.00	342.31	79.00
3,984—4,315	372.64	86.00	376.97	87.00	381.30	88.00	385.64	89.00
4,316—4,647	415.97	96.00	420.30	97.00	424.63	98.00	428.97	99.00
4,648—4,979	459.30	106.00	463.63	107.00	467.96	108.00	472.30	109.00
4,980—5,311	502.63	116.00	506.96	117.00	511.29	118.00	515.63	119.00
5,312—5,643	545.96	126.00	550.29	127.00	554.62	128.00	558.96	129.00
5,644—5,934	589.29	136.00	593.62	137.00	597.95	138.00	602.29	139.00

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENTS

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 15889, effective November 1, 2009, for a maximum of 150 days)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
NOVEMBER AGENDA

JOINT COMMITTEE ON ADMINISTRATIVE RULES

SCHEDULED MEETING:

JAMES R. THOMPSON CENTER
ROOM 16-503
CHICAGO, ILLINOIS
11:00 A.M.
NOVEMBER 17, 2009

NOTICES: The scheduled date and time for the JCAR meeting are subject to change. Due to *Register* submittal deadlines, the Agenda below may be incomplete. Other items not contained in this published Agenda are likely to be considered by the Committee at the meeting and items from the list can be postponed to future meetings.

If members of the public wish to express their views with respect to a rulemaking, they should submit written comments to the Office of the Joint Committee on Administrative Rules at the following address:

*Joint Committee on Administrative Rules
700 Stratton Office Building
Springfield, Illinois 62706
Email: jcar@ilga.gov
Phone: 217/785-2254*

RULEMAKINGS CURRENTLY BEFORE JCAR

PROPOSED RULEMAKINGS

Capital Development Board

1. Illinois Energy Conservation Code (71 Ill. Adm. Code 600)
-First Notice Published: 33 Ill. Reg. 12311 – 9/4/09
-Expiration of Second Notice: 12/13/09

Carnival-Amusement Safety Board

2. Carnival and Amusement Ride Safety Act (56 Ill. Adm. Code 6000)
-First Notice Published: 33 Ill. Reg. 1836 – 2/6/09

JOINT COMMITTEE ON ADMINISTRATIVE RULES
NOVEMBER AGENDA

-Expiration of Second Notice: 12/19/09

Central Management Services

3. Conditions of Employment (80 Ill. Adm. Code 303)
 - First Notice Published: 33 Ill. Reg. 11919 – 8/21/09
 - Expiration of Second Notice: 11/19/09

Education

4. Requirements for Accounting, Budgeting, Financial Reporting, and Auditing (23 Ill. Adm. Code 100)
 - First Notice Published: 33 Ill. Reg. 12538 – 9/11/09
 - Expiration of Second Notice: 12/16/09
5. Voluntary Registration and Recognition of Nonpublic Schools (23 Ill. Adm. Code 425)
 - First Notice Published: 33 Ill. Reg. 7819 – 6/12/09
 - Expiration of Second Notice: 12/16/09

Elections

6. Campaign Financing (26 Ill. Adm. Code 100)
 - First Notice Published: 33 Ill. Reg. 9597 – 7/10/09
 - Expiration of Second Notice: 12/26/09

Healthcare and Family Services

7. Medical Assistance Programs (89 Ill. Adm. Code 120)
 - First Notice Published: 33 Ill. Reg. 8808 – 6/26/09
 - Expiration of Second Notice: 12/12/09
8. Veterans' Health Insurance Program (89 Ill. Adm. Code 128)
 - First Notice Published: 33 Ill. Reg. 8820 – 6/26/09
 - Expiration of Second Notice: 12/12/09
9. Medical Payment (89 Ill. Adm. Code 140)
 - First Notice Published: 33 Ill. Reg. 1617 – 1/30/09
 - Expiration of Second Notice: 11/19/09
10. Medical Payment (89 Ill. Adm. Code 140)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
NOVEMBER AGENDA

- First Notice Published: 33 Ill. Reg. 11174 – 7/31/09
- Expiration of Second Notice: 11/19/09

Higher Education

11. Approval of Noninstructional Capital Projects (23 Ill. Adm. Code 1040)
 - First Notice Published: 33 Ill. Reg. 12299 – 9/4/09
 - Expiration of Second Notice: 12/10/09
12. Tuition and Fee Waiver Guidelines (23 Ill. Adm. Code 1075)
 - First Notice Published: 33 Ill. Reg. 12306 – 9/4/09
 - Expiration of Second Notice: 12/10/09

Human Rights

13. Access to Information (2 Ill. Adm. Code 926)
 - First Notice Published: 33 Ill. Reg. 12421 – 9/11/09
 - Expiration of Second Notice: 12/13/09
14. Procedures of the Department of Human Rights (56 Ill. Adm. Code 2520)
 - First Notice Published: 33 Ill. Reg. 12314 – 9/4/09
 - Expiration of Second Notice: 12/4/09

Human Services

15. Child Care (89 Ill. Adm. Code 50)
 - First Notice Published: 33 Ill. Reg. 7258 – 6/5/09
 - Expiration of Second Notice: 12/4/09
16. Vending Facility Program for the Blind (89 Ill. Adm. Code 650)
 - First Notice Published: 33 Ill. Reg. 6621 – 5/15/09
 - Expiration of Second Notice: 11/29/09

Insurance

17. Workers' Compensation Pools (50 Ill. Adm. Code 575)
 - First Notice Published: 32 Ill. Reg. 19856 – 12/26/08
 - Expiration of Second Notice: 11/21/09
18. Workers' Compensation Self Insurance (Repealer) (50 Ill. Adm. Code 2901)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
NOVEMBER AGENDA

- First Notice Published: 32 Ill. Reg. 19867 – 12/26/08
- Expiration of Second Notice: 11/21/09

Public Health

19. Newborn Metabolic Screening and Treatment Code (77 Ill. Adm. Code 661)
- First Notice Published: 33 Ill. Reg. 7553 – 6/12/09
 - Expiration of Second Notice: 11/19/09

Revenue

20. Retailers' Occupation Tax (86 Ill. Adm. Code 130)
- First Notice Published: 33 Ill. Reg. 11921 – 8/21/09
 - Expiration of Second Notice: 11/22/09

Secretary of State

21. School Bus Driver Permit (92 Ill. Adm. Code 1035)
- First Notice Published: 33 Ill. Reg. 11257 – 7/31/09
 - Expiration of Second Notice: 11/18/09

State Employees Retirement System

22. The Administration and Operation of the State Employees' Retirement System of Illinois (80 Ill. Adm. Code 1540)
- First Notice Published: 33 Ill. Reg. 12084 – 8/28/09
 - Expiration of Second Notice: 12/16/09

State Universities Retirement System

23. Universities Retirement (80 Ill. Adm. Code 1600)
- First Notice Published: 33 Ill. Reg. 12381 – 9/4/09
 - Expiration of Second Notice: 12/9/09

Transportation

24. Airport Hazard Zoning (92 Ill. Adm. Code 16)
- First Notice Published: 33 Ill. Reg. 12100 – 8/28/09
 - Expiration of Second Notice: 11/29/09

JOINT COMMITTEE ON ADMINISTRATIVE RULES
NOVEMBER AGENDA

25. Greater Rockford Airport Hazard Zoning Regulations (Repealer) (92 Ill. Adm. Code 47)
 - First Notice Published: 33 Ill. Reg. 12108 – 8/28/09
 - Expiration of Second Notice: 11/29/09
26. Greenville Airport Zoning Regulations (Repealer) (92 Ill. Adm. Code 48)
 - First Notice Published: 33 Ill. Reg. 12131 – 8/28/09
 - Expiration of Second Notice: 11/29/09
27. Metropolis Municipal Airport Hazard Zoning Regulations (Repealer) (92 Ill. Adm. Code 66)
 - First Notice Published: 33 Ill. Reg. 12145 – 8/28/09
 - Expiration of Second Notice: 11/29/09
28. Pittsfield-Penstone Municipal Airport Hazard Zoning Regulations (Repealer) (92 Ill. Adm. Code 74)
 - First Notice Published: 33 Ill. Reg. 12164 – 8/28/09
 - Expiration of Second Notice: 11/29/09
29. Sparta Community Airport Hazard Zoning Regulations (Repealer) (92 Ill. Adm. Code 82)
 - First Notice Published: 33 Ill. Reg. 12183 – 8/28/09
 - Expiration of Second Notice: 11/29/09
30. Vermilion County Airport Hazard Zoning Regulations (Repealer) (92 Ill. Adm. Code 90)
 - First Notice Published: 33 Ill. Reg. 12202 – 8/28/09
 - Expiration of Second Notice: 11/29/09

Veterans' Affairs

31. Rules Governing Payment of War on Terrorism Compensation Act (95 Ill. Adm. Code 123)
 - First Notice Published: 33 Ill. Reg. 12222 – 8/28/09
 - Expiration of Second Notice: 12/5/09

EMERGENCY RULEMAKINGS

Children and Family Services

32. Services Delivered by the Department of Children and Family Services (89 Ill. Adm. Code 302)
 - Notice Published: 33 Ill. Reg. 14310 – 10/16/09

JOINT COMMITTEE ON ADMINISTRATIVE RULES
NOVEMBER AGENDA

Environmental Protection Agency

33. Procedures for Providing Grants from the Illinois Clean Diesel Grant Program (35 Ill. Adm. Code 261)
-Notice Published: 33 Ill. Reg. 14764 – 10/30/09

Gaming Board

34. Video Gaming (General) (11 Ill. Adm. Code 1800)
-Notice Published: 33 Ill. Reg. 14793 – 10/30/09

Healthcare and Family Services

35. Medical Payment (89 Ill. Adm. Code 140)
-Notice Published: 33 Ill. Reg. 14324 – 10/16/09
36. Reimbursement for Nursing Costs for Geriatric Facilities (89 Ill. Adm. Code 147)
-Notice Published: 33 Ill. Reg. 14350 – 10/16/09

Human Services

37. Food Stamps (89 Ill. Adm. Code 121)
-Notice Published: 33 Ill. Reg. 14627 – 10/23/09

AGENCY RESPONSE

Insurance

38. Preferred Provider Programs (50 Ill. Adm. Code 2051; 33 Ill. Reg. 1927)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of October 27, 2009 through November 2, 2009 and have been scheduled for review by the Committee at its November 17, 2009 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>
12/10/09	<u>Board of Higher Education</u> , Approval of Noninstructional Capital Projects (23 Ill. Adm. Code 1040)	9/4/09 33 Ill. Reg. 12299	11/17/09
12/10/09	<u>Board of Higher Education</u> , Tuition and Fee Waiver Guidelines (23 Ill. Adm. Code 1075)	9/4/09 33 Ill. Reg. 12306	11/17/09
12/12/09	<u>Department of Healthcare and Family Services</u> , Medical Assistance Programs (89 Ill. Adm. Code 120)	6/26/09 33 Ill. Reg. 8808	11/17/09
12/12/09	<u>Department of Healthcare and Family Services</u> , Veterans' Health Insurance Program (89 Ill. Adm. Code 128)	6/26/09 33 Ill. Reg. 8820	11/17/09
12/13/09	<u>Capital Development Board</u> , Illinois Energy Conservation Code (71 Ill. Adm. Code 600)	9/4/09 33 Ill. Reg. 12311	11/17/09
12/13/09	<u>Department of Human Rights</u> , Access to Information (2 Ill. Adm. Code 926)	9/11/09 33 Ill. Reg. 12421	11/17/09

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

12/16/09	<u>State Board of Education</u> , Requirements for Accounting, Budgeting, Financial Reporting, and Auditing (23 Ill. Adm. Code 100)	9/11/09 33 Ill. Reg. 12538	11/17/09
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2009-18
AMENDMENT TO EXECUTIVE ORDER 13 (2009)
ESTABLISHING THE ECONOMIC RECOVERY COMMISSION

WHEREAS, Executive Order 13 (2009) created the Economic Recovery Advisory Commission ("Commission"); and

WHEREAS, the purpose of the Commission was to address how the State of Illinois can respond to the current downturn in the economy and ensure long-term economic stability; and

WHEREAS, the unemployment rate and decline in the state's revenue continue to adversely impact Illinois families and businesses;

THEREFORE, I, Patrick J. Quinn, Governor of Illinois, pursuant to the authority vested in me by Article V of the Illinois State Constitution of 1970, hereby amend Executive Order 13 (2009) to read as follows:

I. CREATION

There is hereby created the Economic Recovery Commission (hereinafter "Commission") as an independent advisory body having the duties set forth in this document, with respect to the Office of the Governor.

II. PURPOSE

In pursuit of the goals of encouraging economic growth, decreasing unemployment, attracting new business enterprises, strengthening existing business enterprises, and ensuring long-term economic stability, the Commission shall:

- a. Conduct a wide-ranging study of policies, enacted elsewhere in the United States and the rest of the world, that allow for rapid economic recovery;
- b. Analyze Illinois' existing tax and regulatory structure, with the aim of identifying opportunities to enhance the economic climate for business and job creation;
- c. Provide independent, nonpartisan information, analysis, and advice to the Governor, as he formulates and implements his plans for economic recovery;

2009-18**AMENDMENT TO EXECUTIVE ORDER 13 (2009)
ESTABLISHING THE ECONOMIC RECOVERY COMMISSION**

- d. At the request of the Governor or at the initiation of the Commission, provide the Governor with updates regarding the Commission's work and preliminary findings;
- e. Submit to the Governor and to the People of Illinois, not later than March 31, 2010, a final report outlining the Commission's findings and recommendations of policies to promote the growth of Illinois' economy and ensure competitiveness in a 21st century economy; and
- f. Ensure, with the logistical assistance of the Office of the Governor, that the report and recommendations of the Commission are available to the public.

III. MEMBERSHIP

The Commission shall be composed of Chairpeople and Commission members to be appointed by the Governor. Members of the Commission shall serve without compensation.

IV. TRANSPARENCY

In addition to whatever policies or procedures it may adopt, all operations of the Commission will be subject to the provisions of the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.) and the Illinois Open Meetings Act (5 ILCS 120/1 et seq.). This section shall not be construed so as to preclude other statutes from applying to the Commission and its activities.

V. EFFECTIVE DATE

This Order shall take effect immediately upon its execution.

Issued by Governor: November 2, 2009

Filed with Secretary of State: November 2, 2009

PROCLAMATIONS

2009-314**Tim McGraw Day**

- WHEREAS, since the release of his debut album in 1993, Tim McGraw has had one of the brightest careers in country music; and
- WHEREAS, in his songs Tim McGraw often sings about complex characters and the human emotions they experience in gritty and realistic ways seldom sung about in country, giving voice to these characters in a way that communicates directly with the listener; and
- WHEREAS, over the years, Tim McGraw has become one of the most popular touring acts of all time; and
- WHEREAS, over the course of his career Tim McGraw has sold over 40 million albums, and dominated the charts with 30 number one singles; and
- WHEREAS, Tim McGraw has earned numerous awards and accolades, including 14 Academy of Country Music Awards, 11 Country Music Association Awards, 10 American Music Awards, three Grammy Awards and three People's Choice Awards ; and
- WHEREAS, the title song of Tim McGraw's new album, "Southern Voice," recognizes the impact that Americans of Southern birth have had on our country; and
- WHEREAS, as his fame has grown, Tim McGraw has become increasingly interested in giving back to the community; and
- WHEREAS, among his many charitable causes, Tim McGraw is member of the American Red Cross National Celebrity Cabinet, volunteered in the aftermath of Hurricane Katrina, and established the Swampstock event, which has funded new Little League ballparks and equipment and established a college scholarship fund for students; and
- WHEREAS, tonight's concert benefits Neighbor's Keeper Fund, founded by Tim McGraw and his wife Faith Hill, to provide funding for qualified community charities selected to offer local services to those in need of assistance; and
- WHEREAS, Tim McGraw has also been a strong supporter of our nation's troops, dedicating the song "If You're Reading This," to the families of our fallen heroes; and

PROCLAMATIONS

WHEREAS, in November of this year, Tim McGraw and Faith Hill will participate in "Country United: Advancing Medicine from the Frontlines to the Homefront," a two-day symposium dedicated to supporting advances in medical research and care for the nation's wounded and injured servicemen and women:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim October 20, 2009 as **TIM MCGRAW DAY** in Illinois, in recognition of his outstanding support of our veterans, service members and their families.

Issued by the Governor October 20, 2009

Filed by the Secretary of State November 2, 2009

2009-315**Sergeant Christopher M. Rudzinski**

WHEREAS, on Friday, October 16, Sergeant Christopher M. Rudzinski of Rantoul died at age 28 of injuries sustained when an improvised explosive device detonated near his vehicle in Afghanistan, where Sergeant Rudzinski was serving in support of Operation Enduring Freedom; and

WHEREAS, Sergeant Rudzinski was assigned to the 293rd Military Police Company, 385th Military Police Battalion, 16th Military Police Brigade (Airborne), based at Fort Stewart, Georgia; and

WHEREAS, Sergeant Rudzinski was a 1999 graduate of Rantoul Township High School, where he was a band member and participated in school musicals; and

WHEREAS, a funeral will be held on Monday, October 26 for Sergeant Rudzinski, who is survived by his wife and a son:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby order all State facilities to fly their flags at half-staff from sunrise on October 24, 2009 until sunset on October 26, 2009 in honor and remembrance of Sergeant Rudzinski, whose selfless service and sacrifice is an inspiration.

Issued by the Governor October 22, 2009

Filed by the Secretary of State November 2, 2009

2009-316**Paralegal Day**

PROCLAMATIONS

WHEREAS, paralegals provide essential and vital legal support for many organizations, including law firms, corporate legal departments, and government offices; and

WHEREAS, to meet the increasing demands for legal services in the United States, the skilled work of paralegals will grow in importance and significance for the operation of American organizations and the application of American law. According to the United States Bureau of Labor Statistics, the paralegal profession will experience greater than average growth through the year 2012; and

WHEREAS, created in 1972, the Illinois Paralegal Association represents more than 1,600 paralegals in our state. The association is one of the oldest and largest statewide organizations that supports paralegals, and is celebrating its 37th anniversary this year; and

WHEREAS, the purpose of the Illinois Paralegal Association is to promote the paralegal profession and communication among paralegals, the legal community, and civic and professional organizations, as well as encourage the continuing education of paralegals:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim November 5, 2009 as **PARALEGAL DAY** in Illinois, as the Illinois Paralegal Association meets for an annual conference, and to commend paralegals in our state for their contributions to our communities.

Issued by the Governor October 23, 2009

Filed by the Secretary of State November 2, 2009

2009-317**School Psychology Awareness Week**

WHEREAS, all children and youth learn best when they are healthy, supported and receive an education that meets their individualized needs; and

WHEREAS, schools can more effectively ensure that all students are ready and able to learn when they meet the needs of the whole child; and

WHEREAS, children's mental health is directly linked to their learning and development, and the learning environment provides an optimal context to promote good mental health; and

PROCLAMATIONS

WHEREAS, sound psychological principles are integral to instruction and learning, social and emotional development, prevention and early intervention, and supporting culturally diverse student populations; and

WHEREAS, school psychologists are specially trained to deliver a continuum of mental health services and academic supports that lower barriers to learning, enabling teachers to teach and students to learn; and

WHEREAS, school psychologists facilitate collaboration to help parents and educators to identify and reduce risk factors, promote protective factors, create safe, caring schools, and access community resources; and

WHEREAS, school psychologists are trained to assess student and school-based barriers to learning, utilize data-based decision-making, implement research-driven prevention and intervention strategies, and evaluate outcomes and improve accountability; and

WHEREAS, the Illinois School Psychologists Association, an affiliate of the National Association of School Psychologists, is a not-for-profit professional association representing school psychologists in the State of Illinois. This year, they will recognize school psychologists in our state for their valuable service during the week of November 9-13:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim November 9-13, 2009 as **SCHOOL PSYCHOLOGY AWARENESS WEEK** in Illinois, in recognition of the vital role that school psychologists play in the personal and academic development of our state's children.

Issued by the Governor October 23, 2009

Filed by the Secretary of State November 2, 2009

2009-318**International Education Week**

WHEREAS, international education and exchange include thousands of programs that promote the sharing of ideas and experiences across borders. These include study abroad programs, citizen and scholarly exchanges, foreign students on U.S. campuses, area and foreign language studies, and global approached to U.S. education; and

PROCLAMATIONS

WHEREAS, by participating in such programs, our young people develop a greater appreciation and respect for other people and their cultures, and are more prepared for a global environment; and

WHEREAS, we live in an increasingly interconnected world, and improving global literacy among our citizens contributes significantly to our nation's foreign policy, economic competitiveness, and national security; and

WHEREAS, through international education, the United States can establish a foundation for dialogue and partnership with the rest of the world and create the conditions for lasting global peace, security, and wellbeing; and

WHEREAS, the United States Departments of State and Education have declared November 16-20, 2009 as International Education Week in observance of the many important contributions of international education to our nation's peace and prosperity:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim November 16-20, 2009 as **INTERNATIONAL EDUCATION WEEK** in Illinois, in recognition of the importance of international education in our lives and communities.

Issued by the Governor October 23, 2009

Filed by the Secretary of State November 2, 2009

2009-319**Rare Disease Day**

WHEREAS, there are nearly 7,000 diseases and conditions considered rare (each affecting fewer than 200,000 Americans) in the United States; and

WHEREAS, while each of these diseases alone may affect only a small number of people, rare diseases as a group affect millions of Americans; and

WHEREAS, many rare diseases are serious and debilitating conditions that have a significant impact on the lives of those affected; and

WHEREAS, unfortunately, there is often no treatment specific to these rare diseases; and

WHEREAS, individuals and families affected by rare diseases often experience problems such as a sense of isolation, difficulty in obtaining an accurate and timely diagnosis,

PROCLAMATIONS

few treatment options, and problems related to accessing or being reimbursed for treatment; and

WHEREAS, while some rare diseases, such as "Lou Gehrig's disease" and Huntington's disease are relatively well known, many others are not known at all by the public, which means that a large share of the burden of raising awareness of these diseases and raising funds for research is borne by patients and their families; and

WHEREAS, thousands of residents of Illinois are among those affected by rare diseases, since statistically nearly 1 in 10 Americans is affected; and

WHEREAS, the National Organization for Rare Diseases (NORD) is organizing a nationwide observance of Rare Disease Day on February 28, 2010, and patients, medical professionals, researchers, government officials, and companies developing treatments for rare diseases are joining together to focus attention on rare diseases as a public health issue on that day:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim February 28, 2010 as **RARE DISEASE DAY** in Illinois, in support of this important public awareness campaign.

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2009-320**National Elevator Escalator Safety Awareness Week**

WHEREAS, the week of November 8 – 14, 2009 has been declared National Elevator Escalator Safety Awareness Week; and

WHEREAS, the purpose of this week is to increase public awareness of the safe and proper use of elevators, escalators, and moving walkways; and

WHEREAS, the goal of this week is to reduce avoidable accidents through education and awareness; and

WHEREAS, the elevator industry greatly contributes to the quality of life by enhancing the capabilities of industries such as mining and lumber and by making possible the modern high-rise building and the skyscraper; and

PROCLAMATIONS

WHEREAS, the observance of National Elevator Escalator Safety Awareness Week is worthy of support and cooperation to benefit citizens, the general public, and the short range vertical transportation industry:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim November 8 – 14, 2009 as **NATIONAL ELEVATOR ESCALATOR SAFETY AWARENESS WEEK** in Illinois.

Issued by the Governor October 23, 2009

Filed by the Secretary of State November 2, 2009

2009-321**Special Kids Day**

WHEREAS, established in 1990, Special Kids Day began as a holiday event for children with special needs and their families to visit Santa Claus without obstacles; and

WHEREAS, today, Special Kids Day has evolved into a not-for-profit organization dedicated to providing celebratory events for children with disabilities and their families in environments designed to accommodate their special needs; and

WHEREAS, Special Kids Day builds on United Nations resolution #47/3, which sets aside December 3 as a day to promote integrating the disabled into society; and

WHEREAS, designed to be a family celebration, this event honors all special needs children and their families to have an opportunity to experience the joys and laughter of the holiday season in a friendly, obstacle free space; and

WHEREAS, during the event, children are able to visit with Santa Claus and have a photo taken, enjoy holiday treats and receive a free goodie bag; and

WHEREAS, this all-volunteer, free event is a result of a combined community effort among local businesses and many dedicated individuals; and

WHEREAS, headquartered in Elmhurst, Special Kids Day has recently branched out to Steger, Illinois. Steger Special Kids Day celebrates this occasion on the first Saturday of December every year; and

WHEREAS, this year, the second annual Steger Special Kids Day will be on December 5th:

PROCLAMATIONS

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim December 5, 2009 as **SPECIAL KIDS DAY** in Illinois, and encourage all citizens to recognize this wonderful event and invest time into one of our most precious resources, our children.

Issued by the Governor October 23, 2009

Filed by the Secretary of State November 2, 2009

2009-322**Affordable Housing Month**

WHEREAS, access to safe and affordable housing is one of the basic necessities of life; and

WHEREAS, foreclosures continue to rise in Illinois, increasing 126 percent since 2006; workers struggle to afford the rent; seniors, people with disabilities, and others with limited incomes need affordable places to live; and there is a shortage of rental units for those with the lowest incomes and long waiting lists to access housing subsidies. These examples illustrate a housing affordability problem that often results in homelessness; and

WHEREAS, all citizens require stable and affordable housing in order to achieve individual and family success, and it is essential that we have a full range of quality housing options available and accessible to meet the needs of all income groups and special needs populations in communities across the state; and

WHEREAS, recognizing that housing is not just about bricks and mortar, it is crucial that grassroots organizations, non-profit housing professionals, financial institutions, elected officials, state agencies and others join forces to guide and promote affordable housing as fundamental to community and economic health; and

WHEREAS, the talents and efforts of grassroots organizations, non-profit housing professionals, financial institutions, elected officials, state agencies and others must be combined to address the challenge of ensuring that every person in Illinois has access to affordable housing:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim November 2009 as **AFFORDABLE HOUSING MONTH** in Illinois, and encourage all citizens to recognize and appreciate the need for reasonably priced housing and its impact on our communities.

Issued by the Governor October 23, 2009

Filed by the Secretary of State November 2, 2009

PROCLAMATIONS

2009-323
SHIP Week

WHEREAS, there are over 1.45 million Illinoisans 65 years of age or older on Medicare and more than 240,000 Illinoisans who are under 65 and have a disability who are on Medicare; and

WHEREAS, according to the U.S. Census Bureau, the number of Illinoisans 65 years of age or older is estimated to increase to more than 2.4 million by the year 2030; and

WHEREAS, elderly and disabled people who lack a social support network can be unaware of or overwhelmed by their Medicare benefits or may be unable to access and complete Medicare application procedures; and

WHEREAS, the Senior Health Insurance Program (SHIP) was originated in 1988 by the Illinois Department of Insurance in order to educate the citizens of Illinois about Medicare benefits and programs through community organizations, senior citizen centers, and the media; and

WHEREAS, since its inception, more than 1,500 SHIP volunteers have contributed nearly 300,000 hours to assist over 307,000 clients, saving Illinois' citizens more than \$56.4 million in customer service costs, \$35 million of which have been recorded in the past three years; and

WHEREAS, more than 900 active SHIP volunteers are truly admirable citizens, contributing their time and talents in order to improve the lives of Illinois' Medicare beneficiaries; and

WHEREAS, consistent with the Department of Insurance's consumer education and protection priorities, SHIP volunteers visit eligible Illinois residents in every county, helping our seniors and disabled citizens work through the often confusing array of Medicare insurance options:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim November 2-6, 2009 as **SHIP WEEK** in Illinois, and encourage the people of Illinois to recognize the important contributions of the SHIP volunteers who assist our elderly and disabled citizens.

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Filed by the Secretary of State November 2, 2009

PROCLAMATIONS

2009-324

Drunk and Drugged Driving Prevention Month

WHEREAS, driving under the influence of alcohol and other mind-altering drugs is a grave problem that destroys individual lives, rips families apart, and strains local communities; and

WHEREAS, motor vehicle crashes killed 1,042 people in Illinois during 2008; and

WHEREAS, 362 of those deaths involved a driver impaired by alcohol; and

WHEREAS, the December holiday season is traditionally one of the most deadly times of the year for impaired driving; and

WHEREAS, for thousands of families across the state and the nation, these holidays are a sad time to remember loved ones they lost to impaired drivers during previous holiday seasons or other times throughout the year; and

WHEREAS, organizations across the state and the nation have joined together with the *You Drink & Drive. You Lose.* and other campaigns that foster public awareness of the dangers of impaired driving and anti-impaired driving law enforcement efforts; and

WHEREAS, the State of Illinois is proud to partner with cities, towns and villages and other traffic safety groups in an effort to make our roads and streets safer:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim December 2009 as **DRUNK AND DRUGGED DRIVING (3D) PREVENTION MONTH** in Illinois, and call upon all citizens, government, agencies, business leaders, hospitals and health care providers, schools, and public and private institutions to promote awareness of the impaired driving problem, to support programs and policies to reduce the incidence of impaired driving, and to promote safer and healthier behaviors regarding the use of alcohol and other drugs this December holiday season and throughout the year.

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ILLINOIS ADMINISTRATIVE CODE
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