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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 15, 2015 until January 4, 2016.

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 2015

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

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

CHIEF PROCUREMENT OFFICER FOR THE
DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Chief Procurement Officer for the Department of Transportation – Contract Procurement
- 2) Code Citation: 44 Ill. Adm. Code 6
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
6.40	Amendment
6.90	Amendment
6.100	Amendment
6.120	Amendment
6.125	Amendment
6.180	Amendment
6.220	Amendment
6.510	Amendment
- 4) Statutory Authority: Implementing the Illinois Procurement Code [30 ILCS 500], Section 2705-600 of the Department of Transportation Law [20 ILCS 2705/2705-600], and the Public Private Agreements for the Illiana Expressway Act [605 ILCS 130] and authorized by Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25], Section 2705-600(7) of the Department of Transportation Law [20 ILCS 2705/2705-600(7)], Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175/25-101], and Section 15(a) of the Public Private Agreements for the Illiana Expressway Act [605 ILCS 130/15(a)]
- 5) A Complete Description of the Subjects and Issues Involved: The Department is amending this Part to clarify and update provisions. Following are the significant changes being made to the Part.

At Section 6.40, Definitions, the Department is adding a definition for “Satisfactory Evidence of Compliance.” In addition, the Department is updating the website link under the definition of “Special Provisions.”

At Section 6.90, Competitive Sealed Proposals, the Department is clarifying that contracts for professional and artistic serves are subject to and governed by the applicable Competitive Selection Procedures adopted by the CPO-GS with the applicable oversight by the CPO-IDOT.

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At Section 6.100, Small Contracts, the Department is adding the following language from Section 20-20(c) of the Code: *Each July 1, the small purchase maximum shall be adjusted for inflation as determined by the Consumer Price Index for All Urban*

Consumers as determined by the United States Department of Labor and rounded to the nearest \$100 by the CPO.

At Section 6.120, Emergency Contracts, the Department is updating the Part for consistency with the Code.

At Section 6.125, Small Business Set-Asides, the Department is updating the Part for consistency with the Code.

At Section 6.180, Change or Withdrawal of Bids, the Department is clarifying that an authorized agent of a bidder may change or withdraw a bid if written or in-person notice of the change or withdrawal is received by the Department before the time specified for submission of bids.

At Section 6.220, Consideration of Bids, the Department is clarifying that after the bids are opened and recorded, the bids will be reviewed for satisfactory evidence of compliance.

At Section 6.510, the Department is clarifying that the determination may be predicated on evidence developed by means of an investigation conducted by the CPO or the Department.

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

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- 11) Statement of Statewide Policy Objective: This rulemaking will not affect units of local government or not-for-profit corporations.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning this proposed amendment. Written submissions shall be filed with:

Mr. Bill Grunloh, Chief Procurement Officer
Chief Procurement Office
Illinois Department of Transportation Construction
2300 S. Dirksen Parkway
Springfield IL 62764

217/558-5434

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Sannaz Etemadi
Illinois Department of Transportation
Office of Chief Counsel
2300 South Dirksen Parkway, Room 313
Springfield IL 62764

217/524-7763

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

- 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

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- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was summarized on the Department's July 2015 Regulatory Agenda.
- 15) Does this rulemaking require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25]? Yes

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, GRANTMAKING,
PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS
CHAPTER III: CHIEF PROCUREMENT OFFICER FOR
THE DEPARTMENT OF TRANSPORTATION

PART 6

CHIEF PROCUREMENT OFFICER FOR
THE DEPARTMENT OF TRANSPORTATION
– CONTRACT PROCUREMENT

SUBPART A: GENERAL

Section

- 6.10 Authority
- 6.20 Policy and Application
- 6.30 Purpose and Policy Interpretations
- 6.40 Definitions

SUBPART B: PUBLICATION OF PROCUREMENT INFORMATION

Section

- 6.50 Transportation Procurement Bulletin
- 6.55 Required Notices
- 6.60 Subscription Fees
- 6.70 Direct Solicitation

SUBPART C: METHODS OF PROCUREMENT

Section

- 6.80 Competitive Sealed Bids
- 6.90 Competitive Sealed Proposals
- 6.100 Small Contracts
- 6.110 Sole Source Contracts
- 6.120 Emergency Contracts
- 6.125 Small Business Set-Asides

SUBPART D: COMPETITIVE SEALED BID PROCEDURES

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Section

- 6.130 General Conditions for Use
- 6.140 Invitations for Bids
- 6.150 Amendments to Invitations for Bids
- 6.160 Preparation of Bids
- 6.170 Delivery of Bids
- 6.180 Change or Withdrawal of Bids
- 6.190 Combination Bids for Construction Contracts
- 6.200 Pre-Bid Conferences
- 6.210 Public Opening of Bids
- 6.220 Consideration of Bids
- 6.230 Mistakes
- 6.240 Award After Bid Evaluation
- 6.250 Split and Multiple Awards
- 6.260 Time for Award
- 6.270 Delay in Award
- 6.275 Notice of Award
- 6.280 Binding Contract
- 6.290 Requirement of Contract Bond for Construction Contracts
- 6.300 Execution of Contract
- 6.310 Publication of Contracts (Repealed)

SUBPART E: COMPETITIVE SEALED PROPOSAL PROCEDURES

Section

- 6.320 General Conditions for Use
- 6.330 Request for Proposals
- 6.340 Delivery of Proposals
- 6.350 Evaluation of Proposals
- 6.360 Discussions with Responsible Offerors
- 6.370 Award
- 6.380 Execution of Contracts

SUBPART F: CONTRACT ADMINISTRATION

Section

- 6.385 Expenditure in Excess of Contract Price

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SUBPART H: SPECIFICATIONS

Section

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SUBPART I: SUSPENSION OF CONTRACTORS OR SUBCONTRACTORS

Section

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6.490 Definitions
6.500 Policy
6.510 General
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6.530 Interim Suspension
6.540 Voluntary Exclusion
6.550 Term of Suspension
6.560 Coverage
6.570 Other Agency Suspensions
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6.600 Exception Provision
6.610 Notice of Suspension
6.620 Response and Request for Hearing
6.630 Hearing Date and Hearing Officer

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6.820	Implementation Procedures
6.830	Target Market Remedial Actions
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6.860	Severability

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6.970	Subsequent Contracts
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AUTHORITY: Implementing the Illinois Procurement Code [30 ILCS 500], Section 2705-600 of the Department of Transportation Law [20 ILCS 2705/2705-600], and the Public Private Agreements for the Illiana Expressway Act [605 ILCS 130] and authorized by Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25], Section 2705-600(7) of the Department of Transportation Law [20 ILCS 2705/2705-600(7)], Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175/25-101], and Section 15(a) of the Public Private Agreements for the Illiana Expressway Act [605 ILCS 130/15(a)].

SOURCE: Adopted by emergency rulemaking at 22 Ill. Reg. 11602, effective July 1, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 21060, effective November 25, 1998; emergency amendment at 29 Ill. Reg. 7832, effective May 12, 2005, for a maximum of 150 days; emergency expired October 8, 2005; amended at 29 Ill. Reg. 18147, effective October 19, 2005; recodified, pursuant to PA 96-795, from Department of Transportation, 44 Ill. Adm. Code 660, to Chief Procurement Officer for Department of Transportation, 44 Ill. Adm. Code 6, at 35 Ill. Reg. 10158; amended at 35 Ill. Reg. 16518, effective September 30, 2011; amended at 36 Ill. Reg. 230, effective December 21, 2011; expedited correction at 36 Ill. Reg. 14883, effective December 21, 2011; amended at 37 Ill. Reg. 5764, effective April 19, 2013; amended at 37 Ill. Reg. 15878, effective September 27, 2013; amended at 37 Ill. Reg. 19098, effective November 15, 2013; recodified Title of the Part at 39 Ill. Reg. 5903; amended at 40 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 6.40 Definitions

As used throughout this Part, terms defined in the Illinois Procurement Code have the same meaning as in the Code and as further defined in this Section. Each term listed in this Section

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has the meaning set forth as follows unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Bid" – An offer made by a bidder in response to a contract item advertised in an Invitation for Bids.

"Bidder" – Any person or entity that in fact submits a bid.

"Change Order" – A formal, written directive issued to a contractor or an agreement that amends a contract in order to address contingencies affecting the performance and completion of the contract, including but not limited to such matters as extra work, design changes or alterations to plans, or special provisions or specifications for which no provision is included in the original contract.

"Chief Procurement Officer" or "CPO" – The person appointed under Section 1-15.15(2) of the Code.

"Code" – The Illinois Procurement Code [30 ILCS 500].

"Construction Agency" – The Illinois Department of Transportation for construction or maintenance of roads, highways, bridges and airports as an agency that enters into construction contracts as authorized by law or by delegation from the CPO. (See Section 1-15.25 of the Code.)

"Contract" – In addition to the definition of contract set forth in Section 1-15.30 of the Code, a contract is the written agreement entered into at the discretion of the SPO between the Department and the contractor comprising such documents as set forth in each individual agreement, including change orders, contract adjustments, and renewals, and setting forth the obligations of the parties for the performance of the contract.

"Contract Adjustment" – A written price adjustment that adds to or deducts from a contract in accordance with provisions included in the original contract, including but not limited to increases or decreases in quantities, incentives, changed conditions and the addition of missing pay items called for in the specifications.

"Contractor" means any person, firm, corporation, organization, partnership or

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association, however organized, and its affiliates, including its owners, directors, officers, partners, managers, key employees and others engaged in primary managerial or supervisory positions.

"Day" – A calendar day.

"Department" – The Illinois Department of Transportation.

"Emergency Affidavit" – The affidavit filed by the CPO with the Procurement Policy Board and the Auditor General setting forth the actual or estimated amount expended, the name of the contractor involved, and the conditions and circumstances requiring the emergency procurement. (See Section 20-30(c) of the Code.)

"Emergency Contract" – The initial written agreement for an emergency procurement.

"Germane" – In relationship to the modification, alteration or amendment of the terms of a contract by change order, the term "germane" means a change that is related to the original terms of the contract but that is not so substantial a departure from the original as to constitute a new contract.

"Multi-year Contract" – A multi-year contract is a contract with a time of performance of more than 12 months.

"Offerors" – For purposes of this Part, the term "offerors" includes only persons or entities submitting proposals that are acceptable or potentially acceptable. The term does not include persons or entities who submitted unacceptable proposals.

"PPB" – The Procurement Policy Board created by Section 5-5 of the Code.

"Procurement Compliance Monitor" or "PCM" – the person appointed under Section 10-15 of the Code.

"Proposal" – A response to a Request for Proposals.

"Purchasing Agency" – A State agency that enters into a contract at the direction of a State purchasing officer or a chief procurement officer. (See Section 1-15.70

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of the Code.)

"Renewal" – An agreement between the parties to a contract to authorize an additional contract period under the terms and conditions of the renewal provision in the original contract.

"Responsible" – The capability, integrity and reliability of a bidder, offeror or contractor that, in all respects, will assure good faith performance to undertake and complete fully the requirements of a contract.

"Responsive" – In the context of bidding procedures, the compliance in all meaningful, material respects with the Invitation for Bids.

"Satisfactory Evidence of Compliance" – A bidder's certification or other assurance of compliance in the contract bid proposal will constitute satisfactory evidence of compliance and will allow a bidder to be considered a responsible bidder on a construction contract under Section 30-22 of the Code.

"Special Provisions" – Additions and revisions to the Standard Specifications for Road and Bridge Construction and the Supplemental Specifications and Recurring Special Provisions (see the Department's website at <http://www.idot.illinois.gov/home/resource/Manuals/Manuals-and-Guides>~~<http://www.dot.state.il.us/desenv/hwyspecs.html>~~) applicable to an individual contract.

"Specifications" – The body of directions, provisions, and requirements for performance of prescribed work. Specifications includes and may be referred to as the Standard Specifications, which is a Department publication of specifications approved for general application and repetitive use.

"State Purchasing Officer" or "SPO" – The person appointed under Section 10-10 of the Code.

"Subcontract" – A contractual agreement between a person or entity and a person or entity who has a contract subject to the Code and this Part, pursuant to which the subcontractor assumes obligation for performing specified work. (See Section 1-15.107 of the Code.)

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"Subcontractor" – A person or entity that enters into a contractual agreement with a total annual value of \$50,000 or more with a contractor who has a contract subject to the Code. (See Section 1-15.108 of the Code.)

"Supplemental Specifications" – Additions and revisions to the Department's Standard Specifications.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART B: PUBLICATION OF PROCUREMENT INFORMATION

Section 6.90 Competitive Sealed Proposals

- a) Department contracts may be procured by competitive sealed proposals when the Department determines that competitive sealed bidding is either not practicable or not advantageous to the State. (See Section 20-15(a) of the Code.)
- b) The determination to use competitive sealed proposals will be made in writing on either a contract-by-contract or a category of contracts basis.
 - 1) "Practicable" Distinguished From "Advantageous." As used in this Subpart, the term "practicable" means that which may be accomplished or put into practical application, and "advantageous" means an assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Before a contract may be entered into by competitive sealed proposals, the Department will determine in writing that competitive sealed bidding is either not practicable or not advantageous to the State.
 - 2) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals may be used. The competitive sealed proposal method differs from competitive sealed bidding in two principal ways. First, it permits discussions with competing offerors and changes in their proposals, including price. Second, it allows comparative evaluations to be made when selecting among acceptable proposals for award of the contract. Where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or

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expertise, where the types of supplies or services may require the use of comparative evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing values other than price alone, or where prior procurement experience indicates that competitive sealed proposals may result in more beneficial contracts for the State, use of competitive sealed proposals is the appropriate procurement method.

- c) Contracts for professional and artistic services are subject to and governed by the applicable Competitive Selection Procedures (44 Ill. Adm. Code 2035) adopted by the CPO-GS with the applicable oversight by the CPO-DOT, are subject to those procedures for procurement.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 6.100 Small Contracts

- a) Individual contracts for supplies or services from any one source that do not exceed \$10,000 may be made without notice, competition or use of any other method of procurement prescribed in the Code or this Part. (See Section 20-20(a) of the Code.) Contracts for professional and artistic services that do not exceed \$20,000 for a nonrenewable term of not more than one year will be procured in accordance with this Section.
- b) Construction contracts, construction supply contracts, construction-related service contracts and change orders made thereto that do not exceed \$30,000 may be procured without notice, competition or use of any other method of procurement prescribed in the Code or this Part. (See Section 20-20 of the Code.)
- c) Estimated needs shall not be divided in any manner to avoid the use of an established method of procurement. (See Section 20-20(a) of the Code.)
- d) Each July 1, the small purchase maximum shall be adjusted for inflation as determined by the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor and rounded to the nearest \$100 by the CPO. (See Section 20-20(c) of the Code.)

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 6.120 Emergency Contracts

- a) A contract may be procured without the use of any other method of procurement prescribed in the Code or this Part when there exists a threat to public health or safety, or when an immediate contract is needed to repair State property in order to prevent or minimize further loss or damage to State property, or to prevent or minimize serious disruption in critical State services that affect health, safety or collection of substantial State revenues, including but not limited to completion of a defaulted contract, or to ensure the integrity of State records. (See Section 20-30(a) of the Code.)
- b) The term of an initial emergency contract will not exceed 90 days as the time reasonably needed for a competitive procurement. For the initial emergency contract:
 - 1) The emergency contract will provide a written description of the basis for the emergency and reasons for the selection of the particular contractor to be included in the contract file. (See Sections 20-30(a) and (c) of the Code.)
 - 2) Notice of the emergency contract will be provided to the PPB and published in the Bulletin no later than ~~5 calendar~~^{3 business} days after the contract is awarded. For purposes of this Section, "contract is awarded" means that the contractor has received notification to proceed, which may be oral, and has started the work.
 - 3) Within 10 days after the procurement, the emergency affidavit will also be posted to the Bulletin and filed with both the PPB and the Auditor General. (See Section 20-30(c) of the Code.) For purposes of this Section, "procurement" means that the contractor has received notification to proceed, which may be oral, and has started the work.
- c) An emergency contract may be extended beyond 90 days if the CPO determines additional time is necessary and that the contract scope and duration are limited to the emergency. The CPO will hold a public hearing in accordance with Section 20-30(a) of the Code.
 - 1) Prior to the execution of an extension past 90 days, the CPO will hold a

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public hearing and provide written justification for the emergency contract. The Department may also provide written justification for the emergency contract.

- 2) Notice of the hearing will be posted at least 14 calendar days prior to the emergency contract extension hearing date and prior to the expiration of the 90 day term of the initial emergency contract. The notice will include a description of the need for the emergency contract extension, the contractor, and the date, time and location of the public hearing.
 - 3) The PPB and members of the public may present testimony at the public hearing.
 - 4) A copy of the notice and documents provided at the hearing will be included in the subsequent Bulletin, along with the decision of the CPO to extend or not extend the emergency contract.
- d) For purposes of this Section, State property includes all property both real and personal. State records include all records regardless of the form of storage. State services include, but are not limited to, all activities committed by law to the jurisdiction or responsibility of the Department, whether provided directly or indirectly by means of contract or intergovernmental agreement.
 - e) The Department will employ such competition as is practicable under the emergency circumstances to abate the emergency situation, including the use of existing contracts.
 - f) Emergency contracts are exempt from the requirements of Section 20-80(d) of the Code as long as notice is filed with the PPB and published in the Bulletin, as required.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 6.125 Small Business Set-Asides

- a) The CPO, in consultation with the Department, may determine categories of construction, supply, and service procurements that will be set aside for small businesses. The set-aside designation may be made for current and future

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procurements for a fair proportion of a specific construction, supply, or service, or for a class of like construction, supplies or services. A fair proportion of construction contracts means no less than 25% nor more than 40% of the annual total contracts for construction. A set-aside designation may last indefinitely or for a stated period of time, as determined by the Department. (See Section 45-45(a) and (c) of the Code.)

- b) A business that meets the State (under Section 45-45(b) of the Code) or federal definition of a small business or small business concern on the day of bid or proposal opening will be considered a small business for the duration of the contract. The definition will be stated in the contract proposal.
- c) If the Department wishes to make a procurement covered by a small business set-aside designation, the solicitation will note that responses are limited to those from responsible small businesses. Bids or proposals received from businesses other than small businesses will be rejected as nonresponsive. (See Section 45-45(a) of the Code.)
- d) If the Department determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Department will reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification will be published in the Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement will be conducted in accordance with the limitations of the Code and this Part. (See Section 45-45(d) of the Code.)
- e) Unless the Department provides a definition for a particular procurement that reflects industrial characteristics or uses a federal standard, a small business is one:
 - 1) Independently owned and operated.
 - 2) Not dominant in its field of operations, which means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration will be given to all appropriate factors, including volume of business, number of employees, financial

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resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

- 3) With annual sales for most recently ended fiscal year no greater than:
 - A) ~~\$13,000,000~~\$10,000,000 for wholesale business;
 - B) ~~\$14,000,000~~\$10,000,000 for construction business; or
 - C) ~~\$8,000,000~~\$6,000,000 for retail business.
- 4) With no more than 250 employees if a manufacturing business.
 - A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year.
 - B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.
- 5) If the business is any combination of retailer, wholesaler or construction business, the annual sales for each component may not exceed the amounts shown in subsection (e)(3)~~-of this Section~~. For example, a business that is both a retailer and wholesaler may not have total sales exceeding ~~\$21,000,000~~\$16,000,000; the retail component may not exceed ~~\$8,000,000~~\$6,000,000; and the wholesale component may not exceed ~~\$13,000,000~~\$10,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (e)(4)~~-of this Section~~.
- 6) When computing the size of a business, the number of employees and annual sales and receipts, as applicable, of the business and all affiliates will be considered. Concerns are affiliates when either one directly or

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indirectly controls or has the power to control the other, or, when a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration will be given to all appropriate factors, including the use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship will not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure. (See Section 45-45(b) of the Code.)

- f) Contractors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses or small business concerns shall submit information verifying that the contractor qualifies as a small business. The Department may establish procedures for verifying such information.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART D: COMPETITIVE SEALED BID PROCEDURES

Section 6.180 Change or Withdrawal of Bids

An authorized agent of aA bidder may change or withdraw a bid if written or in-person notice of the change or withdrawal is received by the Department before the time specified for submission of bids. No change or withdrawal is allowed after bid opening except as provided in Section 6.230 ~~of this Part~~. Changes must be initialed in ink by the bidder. (See Section 20-10(f) of the Code.)

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 6.220 Consideration of Bids

- a) After the bids are opened and recorded, the bids will be reviewed for responsiveness to the Invitation for Bids, and conformity with all requirements prescribed in this Part, and satisfactory evidence of compliance. If unit prices are required, the bids will be compared on the basis of the summation of the products of the quantities shown in the bid schedule by the unit bid prices.
- b) The right is reserved by the Department to reject any or all bids, to waive minor

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informalities or technicalities, to advertise for new bids, or to request confirmation or clarification from any bidder regarding information contained in a bid.

- c) Reasons for rejection of all bids include but are not limited to:
- 1) The object of the contract being procured is no longer required.
 - 2) The contract provisions require amendment.
 - 3) The solicitation did not provide for consideration of all factors of significance to the Department.
 - 4) The bid prices exceed available funds or the bid prices exceed the anticipated estimate of costs to the extent that, in the judgment of the Department, prices are unreasonable.
 - 5) Evidence of collusion among bidders.
 - 6) Actions or events beyond the control of the Department, such as strikes, acts of God, material shortages, acts of the public enemy or litigation, would have an adverse effect on the completion of the anticipated contract.
- d) Reasons for rejection of any individual bids include but are not limited to:
- 1) More than one bid for the same contract item from a bidder under the same or different names.
 - 2) Evidence of collusion among bidders.
 - 3) Unbalanced bids in which the bid prices for some items are, in the judgment of the Department, out of proportion to the bid prices for other items.
 - 4) If the bid does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items or lump sum pay items.

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- 5) If the bid form is other than that furnished or authorized by the Department, or if the form is altered or any part of the form is detached.
- 6) If there are omissions, erasures, alterations, unauthorized additions, conditional or alternate bids, or irregularities of any kind that may tend, in the judgment of the Department, to make the bid incomplete, indefinite, or ambiguous as to its meaning.
- 7) If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- 8) If the bid is not accompanied by the proper bid bond or substitute guaranty.
- 9) If the bid is prepared in any manner other than as indicated in this Part or the Invitation for Bids making the bid not responsive.
- 10) If the bidder failed to incorporate relevant addenda or revisions.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART I: SUSPENSION OF CONTRACTORS OR SUBCONTRACTORS

Section 6.510 General

The CPO may suspend a contractor or subcontractor from participation on any contract or subcontract awarded by or requiring approval or concurrence of the Department upon a determination by the CPO based upon adequate evidence that the contractor or subcontractor has engaged in conduct proscribed by Section 6.520 ~~of this Subpart~~. This determination may be predicated on evidence developed by means of an investigation conducted by the CPO or the Department and procurement compliance monitors and the record of any hearing requested and conducted pursuant to this Subpart; by review of the public record containing a criminal conviction, a civil judgment, or an admission under oath of conduct evidencing proscribed conduct including a plea of nolo contendere; or the findings and decisions made in accordance with law by another public agency, or another appointed CPO, that the contractor or subcontractor has engaged in conduct proscribed by Section 6.520 ~~of this Subpart~~.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Prequalification of Contractors, Authorization to Bid, and Subcontractor Registration
- 2) Code Citation: 44 Ill. Adm. Code 650
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
650.10	Amendment
650.20	Amendment
650.30	Amendment
650.40	Amendment
650.50	Amendment
650.70	Amendment
650.80	Amendment
650.90	Amendment
650.260	Amendment
650.290	Amendment
650.300	Amendment
650.315	Amendment
650.340	Amendment
650.370	Amendment
650.380	Amendment
650.APPENDIX A	Amendment
- 4) Statutory Authority: Implementing Section 4-103 of the Illinois Highway Code [605 ILCS 5/4-103] and Section 2705-595 of the Civil Administrative Code of Illinois [20 ILCS 2705/2705-595] and authorized by Section 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-201.1]
- 5) A Complete Description of the Subjects and Issues Involved: The Department is amending this Part to clarify and update provisions. Following are the significant changes being made to the Part.

At Section 650.10, Purpose, the Department is clarifying that the Chief Procurement Officer for the Department of Transportation and the Department work cooperatively in prequalifying contractors to determine their responsibility.

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At Section 650.20, Definitions, the Department is clarifying the definitions of "Authorization to Bid," "Prequalification," "Request for Authorization to Bid or Not for Bid Status," and adding definitions for "Eligible" and "Special Letting."

At Section 650.30, Introduction to Prequalification, the Department is clarifying that a determination of prequalification, and not the Certificate of Eligibility, permits a contractor to make application for Authorization to Bid on contracts, in accordance with this Part.

At Section 650.40, Application Requirements, the Department is updating website links.

At Section 650.50, Time for Submission, the Department is clarifying the timeframe for a determination of a prequalification rating. In the past, due to administrative delays, the Department has been unable to make the determination three days in advance of the letting. Under the proposed amendment, as long as the contractor complies with the application requirements and deadlines, the Department will work to issue the rating prior to the letting date so the contractor can bid on projects.

At Section 650.70, Waiver of Prequalification and Additional Responsibility Considerations, the Department is bringing the Part up to current practice.

At Section 650.80, Issuance and Effect of Ratings, the Department is removing subsection (d) because the financial interest disclosures are not part of the prequalification process. Instead, they are currently, and appropriately, prescribed under 44 Ill. Adm. Code 6.

At Section 650.90, Effective Date of Ratings, the Department is clarifying that the effective date of a firm's Prequalification shall be the date on which the ratings are determined and approved

At Section 650.260, Equipment Factor (EqF), the Department is clarifying that any piece of equipment that can be assembled for contract performance may be used.

At Section 650.290, Advertising for Bids, the Department is clarifying that the procedures for procuring contracts are set out in the Chief Procurement Officer's rules for contract procurement found at 44 Ill. Adm. Code 6.

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At Section 650.300, Request for Authorization to Bid or Not for Bid Status, the Department is clarifying that the Form BDE124 shall be used by contractors to request Authorization to Bid.

At Section 650.315, Disclosure of Other Procurement Relationships, the Department is updating the Part for consistency with section 50-35(a) of the Code.

At Section 650.340, Joint Ventures, the Department is making the unaudited thresholds consistent with current practice.

At Section 650.370, Registration of Subcontractors, the Department will collect information from Participant firms who are primarily providing trucking and material supplies in accordance with federal regulations. Subcontractors and prequalified firms on the Registered list of firms will not change.

At Section 650.380, Eligibility to Quote or Perform Subcontract Work, the Department is clarifying that bids can be solicited from anyone, however, those subcontractors chosen by the Department's contractors must be registered in accordance with Subpart C of this Part before they are approved to work on Department projects.

At Section 650.APPENDIX A, Available Work Categories, the Department is adding pressure washing to the "25 – Painting and Cleaning" category. The Department is adding modified urethane to the "27 – Pavement Markings" category. The Department is amending the calculation of work rating to the "3 – Hot-Mix Asphalt (HMA) Plant Mix" category.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed 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 will not affect units of local government or not-for-profit corporations.

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- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning this proposed rulemaking. Written submissions shall be filed with:

Mr. Michael Copp, Prequalification Engineer
Illinois Department of Transportation
Bureau of Construction
2300 S. Dirksen Parkway, Room 322
Springfield IL 62764

217/782-3413

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Sannaz Etemadi
Illinois Department of Transportation
Office of Chief Counsel
2300 South Dirksen Parkway, Room 313
Springfield IL 62764

217/524-7763

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

- 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: This rulemaking was summarized on the Department's July 2015 Regulatory Agenda.

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- 15) Does this rulemaking require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25]? Yes

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

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TITLE 44: GOVERNMENT CONTRACTS, GRANTMAKING,
PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER IX: DEPARTMENT OF TRANSPORTATION

PART 650

PREQUALIFICATION OF CONTRACTORS, AUTHORIZATION TO BID,
AND SUBCONTRACTOR REGISTRATION

SUBPART A: PREQUALIFICATION

Section	Purpose
650.10	Purpose
650.20	Definitions
650.30	Introduction to Prequalification
650.40	Application Requirements
650.50	Time for Submission
650.60	Public Disclosure of Contractor Information
650.70	Waiver of Prequalification and Additional Responsibility Considerations
650.80	Issuance and Effect of Ratings
650.90	Effective Date of Ratings
650.100	Expiration Date of Ratings
650.110	Denial or Revocation of Ratings
650.120	Extension of Ratings
650.130	Revisions to Prequalification Ratings
650.140	Transfer of Prequalification Ratings
650.150	Reconsideration and Appeal
650.160	Financial Rating – General
650.170	Financial Statement
650.180	Balance Sheet Schedules
650.190	Other Factors Considered in Determining Financial Ratings
650.200	Methods of Improving a Financial Rating
650.210	Computation of Financial Rating
650.220	Work Rating – General
650.230	Determination of Work Ratings
650.240	Performance Factor (PF)
650.250	Experience Factor (EF)
650.260	Equipment Factor (EqF)
650.270	Capacity to Perform (CP)

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650.280 Calculation of Work Ratings

SUBPART B: AUTHORIZATION TO BID

Section

650.290 Advertising for Bids
650.300 Request for Authorization to Bid or Not for Bid Status
650.310 Affidavit of Availability
650.315 Disclosure of Other Procurement Relationships
650.320 Analyzing Requests for Authorization to Bid
650.330 Issuance of Authorization to Bid
650.340 Joint Ventures
650.350 Denial of Authorization to Bid

SUBPART C: SUBCONTRACTOR REGISTRATION

Section

650.360 Purpose
650.370 Registration of Subcontractors
650.380 Eligibility to Quote or Perform Subcontract Work

650.APPENDIX A Available Work Categories
650.APPENDIX B Request for Extension of Prequalification Ratings (Repealed)
650.APPENDIX C Financial Pledge Letters (Repealed)
650.APPENDIX D Financial Verification Letter (Repealed)
650.APPENDIX E Corporate Resolution (Repealed)

AUTHORITY: Implementing Section 4-103 of the Illinois Highway Code [605 ILCS 5/4-103] and Section 2705-595 of the Civil Administrative Code of Illinois [20 ILCS 2705/2705-595] and authorized by Section 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-201.1].

SOURCE: Adopted at 18 Ill. Reg. 9478, effective July 2, 1994; amended at 21 Ill. Reg. 11238, effective July 29, 1997; amended at 22 Ill. Reg. 20393, effective November 4, 1998; amended at 24 Ill. Reg. 18775, effective December 7, 2000; amended at 30 Ill. Reg. 16373, effective October 10, 2006; amended at 32 Ill. Reg. 7989, effective May 8, 2008; emergency amendment at 35 Ill. Reg. 15485, effective September 9, 2011, for a maximum of 150 days; amended at 36 Ill. Reg. 1775, effective January 19, 2012; recodified Title of the Part at 39 Ill. Reg. 5903; amended at 40 Ill. Reg. _____, effective _____.

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SUBPART A: PREQUALIFICATION

Section 650.10 Purpose

- a) The purpose of this Part is to establish policies and procedures to allow the Illinois Department of Transportation (the Department), in cooperation with the Chief Procurement Officer for the Department, to fulfill its obligations to award all construction and maintenance contracts to the lowest responsive and responsible bidder by prequalifying contractors to determine their responsibility.
- b) A prequalification rating grants neither a license to do business nor a right to bid on or to be awarded a Department contract. It is a preliminary determination of the responsibility of a bidder, who is otherwise in compliance with 44 Ill. Adm. Code 6the procurement rules of the Department, to do the work of a construction or maintenance contract advertised by the Department. Contractors prequalified by this Part may also be used by units of local government on contracts approved for letting and award by the Department.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.20 Definitions

"Affidavit of Availability" – A sworn affidavit indicating all work under contract, pending awards, all subcontracts and value of subcontracts.

"Affiliate" – A member of a group of two or more companies related to one another through common ownership, common management, common control or the power to exercise common control. Two corporations are affiliated when one owns less than a majority of the voting stock of the other, or when both are subsidiaries of a third corporation.

"Applicant" – Any prospective contractor who has applied for prequalification in compliance with the procedures delineated in this Part. "Applicant" may be used interchangeably with "Contractor" throughout this Part.

"Application for Prequalification" – A package of forms titled "Application for Prequalification, Statement of Experience, Equipment and Financial Condition" (Form BC-8) required to be submitted by an applicant in support of its request for a determination of responsibility and a prequalification rating.

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"Authorization to Bid" – The permission given to a contractor to submit a bid on a given Department letting item and the permission to have that bid [made public](#) read.

"Available Bidding Capacity" – The applicable available work ratings and the available financial rating.

"Available Financial Rating" – Financial rating as indicated on the Certificate of Eligibility less the total value of all uncompleted work to be done with the applicant's own forces and work subcontracted to others.

"Available Work Rating" – The work rating in a particular category as indicated on the Certificate of Eligibility less all similar uncompleted work to be done with the applicant's own forces (for a listing of available work categories, see Appendix A of this Part).

"Certificate of Appraiser" – The certification by an appraiser that the appraisal is performed with no direct or indirect interest, financial or otherwise, in the business of the applicant.

"Certificate of Eligibility" – A certificate issued to the applicant by the Department indicating the applicant's financial rating, work ratings and the effective period of prequalification.

"Code" – The Illinois Procurement Code [30 ILCS 500].

"Combining Financial Statement" – A comprehensive financial statement that presents the assets, liabilities, net worth, and operating figures of two or more affiliated companies. The statement presents each affiliate's financial data in separate, adjacent columns and a total column for the combined affiliate data.

"Consolidated Financial Statement" – A financial statement that presents the assets, liabilities, and operating accounts of a parent company and its subsidiaries.

"Contract" – The written agreement between the Department and the contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment. The contract consists of the invitation for bids, the proposal, the

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letter of award, the contract form and contract bond, any specifications and supplemental specifications, any special provisions, any general and detailed plans, and all agreements that are required to complete the construction of the work, including contract time_s— all of which constitute one instrument.

"Contractor" – The individual, partnership, corporation or other business entity recognized by law contracting with the Department for performance of prescribed work. An applicant which has been issued a Certificate of Eligibility.

"Contractor" may be used interchangeably with "Applicant" throughout this Part.

"Department" – The Illinois Department of Transportation.

"Department of Human Rights Identification Number" – A number assigned to an applicant who has prequalified with the Department of Human Rights.

"Director" – The Director of the Division of Highways or the Director's designee.

"Eligible" – Satisfying the appropriate conditions as set forth in the contract solicitation documents.

"Engineer of Construction" – The individual responsible for directing the development of the Department's highway construction policies ~~that~~^{which} assure uniform practices, interpretation and applications in Illinois.

"Financial Rating" – The measured ability of an applicant to sustain adequate cash flow for the duration of an awarded contract based on the submitted application for prequalification.

"Financial Statement" – A presentation of financial data, including accompanying notes, derived from accounting records that are intended to show an applicant's economic resources and obligations at a point in time or the changes therein for a period of time in conformity with a comprehensive basis of accounting.

"Joint Venture" – Two or three contractors combining their available financial and work ratings for the purpose of bidding a construction project.

"Letter of Subordination" – A signed statement from a stockholder, officer, director, employee, parent, subsidiary or affiliate agreeing not to withdraw a

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specific amount of money loaned to the applicant during the period of prequalification.

"Net Worth" – Total assets minus total liabilities.

"Parent" – A corporation that owns or controls subsidiary companies through the ownership of voting stock. A parent corporation is usually an operating company in its own right. Where the parent has no business of its own, the term "holding company" may apply.

"Prequalification" – The rating process established by the Department required of that requires all prospective bidders, unless waived, to obtain a Certificate of Eligibility prior to being considered for Authorization to Bid ~~issuance of bidding proposal forms and plans for any contract awarded by the Department~~, as well as being considered for contracts to be awarded by local agencies requiring approval of award by the Department. Once prequalified, an applicant is issued a Certificate of Eligibility.

"Prequalification Section" – The section within the Bureau of Construction of the Department responsible for determining responsibility, financial ratings, work ratings, and the issuance of bidding proposals.

"Request for Authorization to Bid or Not for Bid Status" – A form, BDE 124, provided by the Department to assist a contractor in making a formal request for Authorization ~~plans and proposals on CD-ROM, and subsequent authorization~~ to Bid ~~bid~~ on the requested items.

"Responsibility" – The capability in all respects to perform fully the requirements of an awarded contract, and the integrity and reliability that will assure good faith performance.

"Special Letting" – A letting that is not listed on the Department's annual letting schedule as posted on the Transportation Procurement Bulletin.

"Specialty Items" – Items that are designated in the contract documents that are considered to require specialized construction techniques that are not ordinarily available in contracting organizations qualified to bid.

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"Standard Specifications" – A Department publication entitled Standard Specifications for Road and Bridge Construction that sets forth the contract provisions for road and bridge construction.

"Subsidiary" – A corporation having more than 50% of the voting stock owned by another corporation called the "parent".

"Transportation [Procurement](#) Bulletin" – The public document that is the official publication and invitation issued by the Department for bids on construction projects.

"Working Capital" – Current assets less applied discounts and current liabilities.

"Work Rating" – The dollar value of work of a particular category of construction that an applicant can perform with his/her organization and equipment in one construction season.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.30 Introduction to Prequalification

- a) As required by [Subpart B](#) ~~this Part~~, each contractor shall be prequalified, or deemed eligible, prior to being ~~granted~~ considered for issuance of an Authorization to Bid on contracts advertised by the Department.
- b) Except as otherwise provided in Section 650.70 ~~of this Part~~, in order to become prequalified, an applicant shall submit an application for prequalification using forms furnished by the Department.
- c) Upon receipt of a completed application, the Prequalification Section evaluates the information, determines the responsibility of the applicant and calculates a prequalification rating for the applicant.
- d) The prequalification rating is a combination of two subratings: the financial rating and the work rating. The policies and procedures used by the Prequalification Section to determine these two subratings are delineated in this Subpart.
- e) After the Prequalification Section determines the applicant to be responsible and

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calculates the applicant's prequalification ratings, the applicant will be issued a Certificate of Eligibility. Once prequalified, a contractor may be considered for ~~This certificate permits the applicant, now a prequalified contractor, to make application for~~ Authorization to Bid on contracts within the contractor's available bidding capacity in accordance with Subpart B ~~of this Part~~.

- f) Pursuant to the Code, an applicant must also be prequalified or submit evidence of application with the Illinois Department of Human Rights (IDHR) prior to obtaining Authorization to Bid on contracts which are subject to the competitive bidding requirements of the Code. Information and forms concerning the rules of IDHR may be obtained from the following website: <http://www.illinois.gov/dhr/publiccontracts/Pages/default.aspx>.

~~Illinois Department of Human Rights
Public Contracts Division
100 West Randolph – Suite 10-100
Chicago, Illinois 60604~~

~~312/814-2432~~

- g) Pursuant to Section 13.05 of the Business Corporation Act of 1983 [805 ILCS 5/13.05], out-of-state contractors are required to secure a certificate from the Illinois Secretary of State authorizing them to do business in Illinois. All contractors are required to be *authorized to transact business or conduct affairs in Illinois prior to submission of a bid* [30 ILCS 500/20-43]. In addition, out-of-state prequalified contractors are required to staff and maintain an office located within the geographic boundaries of the State of Illinois. The in-state office will be the primary office at which all business with the Department will be conducted. The certificate must be obtained prior to the execution of a contract. Application forms can be obtained from the following website: http://www.cyberdriveillinois.com/departments/business_services/home.html.

~~Illinois Secretary of State
Corporation Division
Howlett Building
3rd Floor
Springfield, Illinois 62756
217/782-1834~~

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(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.40 Application Requirements

- a) The application for prequalification is available on the Department's ~~website~~~~internet home page~~ at <http://www.idot.illinois.gov/doingbusiness/procurements/constructionservices/index>~~www.dot.il.gov~~ or by writing or calling:

Illinois Department of Transportation
Bureau of Construction, Prequalification Section
2300 South Dirksen Parkway, Room 322
Springfield, Illinois 62764

217/782-3413

- b) An application for prequalification shall be complete and submitted on the form furnished by the Department and in accordance with this Part.
- c) An application for prequalification shall consist of the following information:
- 1) The applicant's name, address, telephone number and telefax number;
 - 2) The applicant's Federal Employer's Identification Number (F.E.I.N.) or social security number if the applicant does not have a F.E.I.N.;
 - 3) The applicant's Illinois Department of Human Rights Identification Number and registration expiration date;
 - 4) The applicant's completed Statement of Experience and Financial Condition;
 - 5) All other information required by this Part or requested by the Prequalification Section.
- d) Submission of a completed application before the cut-off dates is the sole responsibility of the applicant. Cut-off dates are established based on the date of the letting and whether the applicant is a first-time applicant or an applicant seeking to renew its prequalification ratings (see Section 650.50(a) and (b) for

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additional information). A schedule of cut-off dates is available at <http://www.idot.illinois.gov/doingbusiness/procurements/construction/services/constructionbulletins/transportationbulletin/indexwww.dot.il.gov/desenv/letsched.html>.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.50 Time for Submission

- a) An applicant seeking to be prequalified with the Department for the first time must submit a complete application for prequalification no later than 4:30 p.m. prevailing time no later than ~~21~~²⁰ days prior to the scheduled date of the letting for which the applicant desires to bid. If the day of receipt falls on a weekend or a holiday, the following work day will determine the cut-off. The Department gives public notice of the letting dates and cut-off dates in the Transportation Bulletin. The Prequalification Section will make its determination ~~at least three days~~ prior to the relevant letting date.
- b) An applicant seeking to renew its prequalification ratings with the Department must submit a complete renewal application prior to the expiration of the applicant's existing prequalification ratings (see Section 650.100 for additional information).
- c) An applicant seeking to revise its current prequalification ratings with the Department must submit revisions no later than 4:30 p.m. prevailing time no later than 21 days prior to the scheduled date of the letting for which the applicant desires to bid. The Prequalification Section will make its ratings determination prior to the relevant letting date.
- d) If additional projects are advertised for a letting or special letting through the issuance of a supplemental bulletin, the day of receipt for application forms or additional information is seven days after the date of issuance of the supplemental bulletin to submit bids on those projects advertised in the supplemental bulletin.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.70 Waiver of Prequalification and Additional Responsibility Considerations

Prequalification may be waived or additional responsibility or eligibility factors may be

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established for selected contracts advertised in the Transportation [Procurement](#) Bulletin. In such contracts, the manner of determining bidder responsibility will be stated in the advertised contract and Transportation [Procurement](#) Bulletin. Contracts in which such waiver may be made include, but are not limited to, contracts that require specialized skills not covered by available work categories, contracts for furnished manufactured products, [small business set-asides](#), or contracts in which a waiver is necessary to achieve sufficient competition. However, contractors must still obtain an Illinois Department of Human Rights identification number and comply with the procedures of Subpart B ~~of this Part~~.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.80 Issuance and Effect of Ratings

- a) Once the Prequalification Section has completed its analysis of all information relevant to the determination of ratings and has established the ratings of the applicant, a Certificate of Eligibility will be issued to the applicant. A copy of the Certificate of Eligibility will be provided to requesting units of local government.
- b) ~~Prequalification~~[The Certificate of Eligibility](#) permits the prequalified contractor to make application for Authorization to Bid on contracts in accordance with the procedures of Subpart B ~~of this Part~~. The Certificate of Eligibility may be used by units of local government as evidence of contractor eligibility to bid on contracts advertised and awarded by the units of local government with approval by the Department as required by law.
- c) The Certificate of Eligibility and the ratings therein confer neither a license nor a right to bid on or to be awarded a contract. Prequalification is an initial, preliminary determination of responsibility which must be finally determined at the time of award and execution of a contract advertised by the Department or at the time of approval in the case of contracts subject to Department approval by law.
- d) ~~Financial Interest Disclosure~~
 - 1) ~~Section 50-35 of the Illinois Procurement Code [30 ILCS 500/50-35] requires that all bids of more than \$10,000 be accompanied by disclosure of the financial interests of the bidder. The financial interests to be disclosed include the ownership or distributive income share that is in excess of 5% or an amount greater than 60% of the annual salary of the~~

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~~Governor, of the bidding entity or its parent entity, whichever is less, unless the contractor or bidder is a publicly traded entity subject to Federal 10K reporting, in which case it may submit its 10K disclosure in place of the prescribed disclosure. The disclosure includes the names, addresses, and dollar or proportionate share of ownership of each person making the disclosure, the instrument of ownership or beneficial relationship, and notice of any potential conflict of interest resulting from the current ownership or beneficial interest of each person making the disclosure having any of the relationships identified in Section 50-35 of the Code and on the disclosure form provided by the Department with the Invitation for Bids in the Transportation Bulletin.~~

- ~~2) A contractor that is issued a Certificate of Eligibility and that intends to make application for Authorization to Bid on contracts in accordance with the procedures of Subpart B of this Part may file the disclosure forms with the Prequalification Section and periodically update the forms as necessary in order to comply with the disclosure requirements.~~
- ~~3) The Invitation for Bids issued by the Department provides space for the bidding contractor to incorporate by reference the disclosure forms on file and to certify that the forms are accurate.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.90 Effective Date of Ratings

The effective date of ~~a firm's prequalificationa Certificate of Eligibility~~ shall be the date on which the ratings are determined and approved unless, for a new applicant, the application or additional information is received during the prequalification cut-off period (see Section 650.50(a)~~of this Part~~) in advance of a letting. For a renewal applicant, the effective date of ~~prequalificationa Certificate of Eligibility~~ shall be the date on which the ratings are determined and approved unless the application or additional information is received after the authorization to bid cut-off date (see Section 650.330(b)~~of this Part~~) in advance of a letting. In these instances, the effective date shall be the day following the letting or the date on which the ratings are determined and approved, whichever is later.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.260 Equipment Factor (EqF)

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- a) Work categories which require the applicant to have specific equipment and plant facilities are indicated in ~~Section 650. Appendix A of this Part~~. Determination of work ratings in these categories requires the calculation of an Equipment Factor which measures the physical productive capacity of the applicant's equipment and facilities. Equipment Factors are based on standards which produce an average dollar value of productivity as set forth in ~~Section 650. Appendix A of this Part~~. The Department may adjust the standards as necessary to reflect increases in construction costs. The word "equipment" used in this Section includes all machines, tools and plant facilities.
- b) In calculating Equipment Factors, the Department will consider:
- 1) Equipment owned outright.
 - 2) Rented equipment. Confirmation of rented equipment available for use by the lessee shall be by submittal of a signed and notarized affidavit. No credit will be given for rented equipment not available to establish an equipment factor. Applicants shall submit a copy of the rental agreement, which must contain the following:
 - A) Time period.
 - B) Make, model, year, serial number and size or capacity of the equipment.
 - C) Monetary consideration.
 - D) Signature of the lessee and lessor.
- c) Credit for equipment will not be given until the applicant provides proof that all required federal, State or local permits or licenses to operate the equipment have been obtained.
- d) No credit will be given for any piece of equipment that is not serviceable, that is in disrepair or that is inoperable. A disassembled piece of equipment, including new equipment, that is in all other respects serviceable, operable if assembled and available in accordance with subsection (f) ~~of this Section~~ may be credited provided that it will be assembled for the performance of contracts awarded

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during the period of prequalification. For example, a batch plant supporting a Portland Cement Concrete Paving work rating may be disassembled, stored and reassembled for use on contracts awarded during the period of prequalification.

- e) Equipment, including but not limited to front-end loaders, motor graders and cranes are versatile and can perform several types of work. If the contractor does not assign equipment to a specific category, the Department will assign the equipment on the basis of the contractor's work experience and requested ratings.
- f) The Department will give credit for equipment that is available for a work rating category. Conditions rendering equipment unavailable may include but are not limited to the following:
 - 1) Equipment owned but leased to another individual or business.
 - 2) Equipment that is devoted to a business enterprise of the applicant unrelated to or inconsistent with making the equipment available for the work category sought. Examples of this unavailability condition include but are not limited to the following. An applicant may have front-end loaders that are used in a quarry. This equipment would not be considered available for the work category of Earthwork. An applicant may sell the product of a concrete plant to the public by retail sales. This plant would not be available for the work category of Portland Cement Concrete Paving.
 - 3) Equipment that is not readily transported or relocated and that is not located within the State of Illinois or a bordering state or commonwealth at a location sufficiently proximate to the State of Illinois necessary to satisfy contract delivery requirements.
 - 4) Equipment that is readily transported or relocated but the applicant does not demonstrate, with intent and action, the transportation or relocation to the State of Illinois or a bordering state or commonwealth at a location sufficiently proximate to the State of Illinois necessary to satisfy contract delivery requirements.
 - 5) Equipment not available to the applicant or not capable of being used to perform contracts for any reason.

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- g) The applicant shall make equipment available for inspection by the Department to verify possession, to determine serviceability, and to confirm availability for use in the work category.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART B: AUTHORIZATION TO BID

Section 650.290 Advertising for Bids

The procedures for procuring contracts are set out in the [Chief Procurement Officer's Department's](#) rules for contract procurement found at 44 Ill. Adm. Code ~~6660~~. The procedures of this Subpart B govern the granting of authority to bid on contracts advertised for bids in the Transportation [Procurement](#) Bulletin in accordance with the [Chief Procurement Officer's Department's](#) rules for contract procurement.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.300 Request for Authorization to Bid or Not for Bid Status

A Request for Authorization to Bid or Not for Bid Status (Form [BDE 124BD-124 INT](#)) is published with the Transportation [Procurement](#) Bulletin. The Form [BDE 124BD-124 INT](#) shall be used by contractors to request [Authorization to Bid proposals and plans on CD-ROM and to request formal authorization to bid](#) on contracts advertised in the Transportation [Procurement](#) Bulletin. Anyone may obtain proposal forms and plans regardless of prequalification status. An Authorization to Bid must be granted in accordance with this Part before a prequalified contractor may submit a bid, [unless prequalification is waived](#).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.315 Disclosure of Other Procurement Relationships

- a) Section 50-35(h) of the Illinois Procurement Code [30 ILCS 500/50-35(h)] requires that all bids of more than ~~\$50,000~~[\\$10,000](#) be accompanied by disclosure of all current or pending contracts, proposals, leases, or other ongoing procurement relationships the contractor has with any other unit of State government. ~~This disclosure is required in addition to the financial interest disclosure provided at Section 650.80(d) of this Part.~~

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- b) The Department provides the form for making the required disclosure of other procurement relationships with the Invitation for Bids in the Transportation [Procurement Bulletin](#).
- c) Contractors submitting an Affidavit of Availability with a request for Authorization to Bid may incorporate by reference on this disclosure form the contents of the Affidavit of Availability that are responsive to the disclosure requirement. Procurement relationships that are not included in the Affidavit of Availability shall be disclosed on the form. ~~Contractors not required to submit an Affidavit of Availability as provided in Section 650.310(a) of this Part shall make the required disclosures on the disclosure form.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.340 Joint Ventures

- a) Prequalified contractors may combine their available bidding capacity and request an Authorization to Bid for a single contract to bid as a joint venture after Department approval.
- b) Each request for approval of a joint venture shall be indicated by the filing of a Certificate of Joint Venture for each of the contracts for which joint venture approval is sought. The form is available from the Prequalification Section. It identifies the managing partner and indicates the joint venture agreement shall be available to the Department for inspection. In addition, each joint venture partner firm shall submit an Affidavit of Availability. The Certificate must be received no later than 4:30 p.m. prevailing time at least seven days prior to the scheduled date of the letting for which bidding proposals are sought.
- c) The proposed joint venture shall not be approved for the issuance of bidding proposals if the establishment of a joint venture would unduly restrict competition. A determination that a proposed joint venture would unduly restrict competition is limited to any of the following reasons:
 - 1) That the proposed joint venture would consist of more than three prequalified contractors unless the project is designated by the Department in the advertisement for bids as open for unrestricted joint venturing due to the magnitude, complexity and risks of the work.

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- 2) That for letting items estimated by the Department to be bid at less than \$1,000,000, more than one of the proposed joint venture partners has the individual prequalification ratings and bid capacity to bid the item without the approval of the venture. This determination shall not apply to joint ventures between affiliated contractors based upon 51 percent or more common controlling ownership or common management where the officers, directors or general partners control the board of directors and/or management of each contractor.
- d) Contractors whose financial ratings are based upon unaudited financial statements will not be permitted to joint venture with each other to bid contracts that are estimated to exceed ~~\$750,000~~~~\$500,000~~ or \$1,500,000, depending on the contractor's unaudited status (see Section 650.170(c)(1)(A) and (B)). However, such contractors may be permitted to joint venture with contractors who have a financial rating based upon an audited statement to bid contracts estimated to exceed ~~\$750,000~~~~\$500,000~~.
- e) If a joint venture work rating is limited by its maximum financial rating, the full value of the computed work rating will be used in analyzing the joint venture request for a bidding proposal. However, the combined maximum work rating in any category shall not exceed the combined maximum financial rating of the joint venture.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART C: SUBCONTRACTOR REGISTRATION

Section 650.370 Registration of Subcontractors

- a) All firms desiring to bid or quote subcontract work to prequalified contractors holding authorization to bid on contracts advertised by the Department shall register on an annual basis for inclusion in the participant list. Prequalified contractors are included automatically on the participant list. Participant firms~~Contractors~~ that are not subcontractors or prequalified but that desire to bid or quote ~~subcontract~~ work or materials on any Department contract shall register in accordance with this Subpart C.
- b) The Department shall furnish an electronic registration form for use by potential subcontractors and other participant firms desiring registration. The electronic

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form is obtained and shall be completed at the Department's website at <http://www.idot.illinois.gov/doingbusiness/procurements/constructionservices/indexwww.dot.il.gov>. Requests for information regarding registration and the electronic form may be made by mail or by telephone to:

Illinois Department of Transportation
Bureau of Construction, Prequalification Section
2300 S. Dirksen Parkway, Room 322
Springfield IL 62764

(217) 782-6667

- c) The following information will be required to be reported on the registration form:
- 1) the firm's name;
 - 2) the firm's address and telephone number;
 - 3) the firm's tax ID type and tax ID number;
 - 4) the date the firm was established and its form of business organization;
 - 5) the annual gross receipts of the firm for the prior fiscal year of the firm;
~~and~~
 - 6) the owners of the firm; ~~and~~
 - 7) type of work.
- d) A registered firm will be issued a confirmation number.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 650.380 Eligibility to Quote or Perform Subcontract Work

~~A~~No prequalified contractor who is issued an authorization to bid in accordance with this Part may solicit or accept bids or quotes from potential subcontractors, for the performance of work on contracts, that are not registered with the Department ~~in accordance with this Subpart C.~~

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However, subcontractors must be registered in accordance with Subpart C before being approved to work on projects. This requirement will be enforced by appropriate contract provisions.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 650.APPENDIX A Available Work Categories

- 1 Earthwork
- 2 Portland Cement Concrete (PCC) Paving
- 3 Hot-Mix Asphalt (HMA) Plant Mix
- 4
- 5 HMA Paving
- 6 Cleaning and Sealing Cracks & Joints
- 7 Soil Stabilization and Modification
- 8 Aggregate Bases & Surfaces (Type A and Type B)
- 9 Structures (Highway, Railroad, and Waterway)
- 10 Structures Repair
- 11 Anchors and Tiebacks
- 12 Drainage
- 13 Drainage Cleaning
- 14 Electrical
- 15 Cover and Seal Coats (Type A and Type B)
- 16 Slurry Applications
- 17 Concrete Construction
- 18 Landscaping
- 19 Seeding and Sodding

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- 20 Vegetation Spraying
- 21 Tree Trimming and Selective Tree Removal
- 22 Fencing
- 23 Guardrail
- 24 Grouting
- 25 Painting [and Cleaning](#)
- 26 Signing
- 27 Pavement Markings (Paint, Thermoplastic, Epoxy, ~~and Polyurea~~, [and Modified Urethane](#))
- 28
- 29
- 30 Installation of Raised Pavement Markers
- 31 Pavement Texturing and Surface Removal
- 32 Cold Milling, Planing and Rotomilling
- 33 Erection
- 34 Demolition
- 35 Fabrication
- 36 Tunnel Excavation
- 37 Expressway Cleaning
- 38 Railroad (Track) Construction

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- 39 Marine Construction
- 40 Hydraulic Dredging
- 41 Hot (in-place) Recycling
- 42 Cold (in-place) Recycling

1 – EARTHWORK

Consists of clearing, grubbing, tree removal (except selective tree removal), hedge removal, roadway excavation, channel excavation, borrow excavation, special excavation, topsoil excavation and placement, ditch excavation, common excavation, solid rock excavation, mine refuse excavation, pavement removal, hauling, embankment (earth, stone, gravel or other materials), backfilling (all types of materials), grading, compacting and trenching. This category is also applicable to projects involving Demolition (see definition), riprap installation, construction of aggregate ditch, construction of gabions, slope mattress and revetment mats (riprap or interlocking concrete blocks) and removals. In addition, this category is applicable to Seeding for Land Reclamation projects.

EQUIPMENT: Scrapers, gradalls, graders, cranes, shovels, excavators, backhoe loaders, front-end loaders, skid-steer loaders, bulldozers, sheeps foot rollers, vibratory rollers or fine grading equipment are required to establish a rating.

CALCULATION OF WORK RATING: Primary or advanced formula.

<u>Equipment</u>	<u>Equipment factor (EqF)</u>
Self-propelled scrapers	\$21,000 per cubic meter of heaped capacity
	\$16,000 per cubic yard of heaped capacity
Pull type scrapers	\$12,000 per cubic meter of heaped capacity
	\$9,000 per cubic yard of heaped capacity
Gradalls	\$115,000 each
Graders	\$100,000 each
Cranes, shovels, excavators and backhoe loaders	\$360,000 for .5 cubic meter bucket size
	\$405,000 for .75 cubic meter bucket size
	\$480,000 for 1 cubic meter bucket size

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	\$580,000 for 1.25 cubic meter bucket size
	\$730,000 for 1.5 cubic meter bucket size
	\$800,000 for 1.75 cubic meter bucket size
	\$880,000 for 2 cubic meter bucket size
	\$1,060,000 for 2.5 cubic meter bucket size
	\$1,400,000 for 3 cubic meter bucket size
	\$1,730,000 for 3.5 cubic meter bucket size
	\$375,000 for .75 cubic yard bucket size
	\$405,000 for 1 cubic yard bucket size
	\$460,000 for 1.25 cubic yard bucket size
	\$550,000 for 1.5 cubic yard bucket size
	\$635,000 for 1.75 cubic yard bucket size
	\$750,000 for 2 cubic yard bucket size
	\$835,000 for 2.5 cubic yard bucket size
	\$1,010,000 for 3 cubic yard bucket size
	\$1,210,000 for 3.5 cubic yard bucket size
	\$1,440,000 for 4 cubic yard bucket size
	\$1,610,000 for 4.5 cubic yard bucket size
Front-end loaders	\$115,000 for less than 1.5 cubic meter bucket size
	\$210,000 for 1.5 to 2 cubic meter bucket size
	\$340,000 for 2.1 to 3 cubic meter bucket size
	\$475,000 for 3.1 to 4 cubic meter bucket size
	\$605,000 for greater than 4 cubic meter bucket size
	\$115,000 for less than or equal to 2 cubic yard bucket size
	\$230,000 for 2.1 to 3 cubic yard bucket size
	\$375,000 for 3.1 to 4 cubic yard bucket size
	\$460,000 for 4.1 to 5 cubic yard bucket size
	\$605,000 for greater than 5 cubic yard bucket size
Skid-steer loaders	\$50,000 each
Bulldozers	\$200,000 each
Fine grading equipment	\$200,000 each
Self-propelled rollers	\$50,000 each
Pull-type rollers	\$15,000 each
Disc	\$15,000 each
Water truck	\$1.35 per liter
	\$5 per gallon
Off-road and bottom-dump trucks	\$20,000 per cubic meter of heaped capacity
	\$15,000 per cubic yard of heaped capacity

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2 – PORTLAND CEMENT CONCRETE (PCC) PAVING

Consists of constructing pcc pavement, continuously reinforced pcc pavement, pcc base course and pcc base course widening, cement aggregate mixture sub-base, pozzolanic stabilized mixture sub-base and pozzolanic stabilized base course. This category is also applicable to Concrete Construction.

EQUIPMENT: A central mix plant or a batch plant with truck mixers, formless paver and finishing machine. A concrete plant with either a formless paver or a finishing machine is the minimum equipment requirement.

CALCULATION OF WORK RATING: Primary or advanced formula.

<u>Equipment</u>	<u>Equipment Factor (EqF)</u>
Central Mix Plant and Batch Plant*	(C.M./Batch) x (20 Batches/Hr.) x (8 Hrs./Day) x (80 Days/Yr.) x (\$105/C.M.) x (1.0) for an approved plant (C.Y./Batch) x (20 Batches/Hr.) x (8 Hrs./Day) x (80 Days/Yr.) x (\$80/C.Y.) x (1.0)
Central Mix Dual Plant and Dual Batch Plant*	(C.M./Batch) x (20 Batches/Hr.) x (8 Hrs./Day) x (80 Days/Yr.) x (\$105/C.M.) x (1.7) for an approved plant (C.Y./Batch) x (20 Batches/Hr.) x (8 Hrs./Day) x (80 Days/Yr.) x (\$80/C.Y.) x (1.7)

* To receive the maximum equipment factor (EqF) for a batch plant, the contractor shall possess a minimum of one truck mixer for every cubic yard of batch capacity of the plant.

3 – HOT-MIX ASPHALT (HMA) PLANT MIX

The placement of HMA pavement (Full Depth), binder and surface course (Class I and Superpave), base course widening, base course, stabilized sub-base, shoulder, shoulder curb, sidewalk, driveway, median, patching, open graded asphalt friction course and incidental surfacing. Also includes placement and hot recycling of reclaimed aggregates and asphaltic cements, and placement and production of cold mix stabilized base. This category is also applicable to HMA Paving.

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EQUIPMENT REQUIRED: An approved HMA plant, an approved HMA spreading and finishing machine and compaction equipment.

CALCULATION OF WORK RATING: Primary or advanced formula.

<u>Plant Production Rating</u>	<u>Equipment Factor (EqF)</u>
Metric Tons Per Hour (MTPH)	MTPH x (8 Hrs./Day) x (80 Days/Yr.) x (\$ 7235 /Ton)
Tons Per Hour (TPH)	TPH x (8 Hrs./Day) x (80 Days/Yr.) x (\$ 6932 /Ton)

Note: An approved HMA plant is a new or used plant that is used to calculate the EqF pursuant to Section 650.260 of this Part, and that is assigned a nominal production rating by the Bureau of Materials and Physical Research for the work category. Contracts may require the production of Class I or Superpave mixtures. The approved plant will be rated for production of Class I and Superpave mixtures prior to the production of such mixtures.

5 – HMA PAVING

Consists of placing HMA base, surface, widening or shoulders with a HMA spreading and finishing machine. This category is restricted to either 1,200 tons in any one contract (Class I, BAM, or Superpave) or as specified by the local agency. HMA, sidewalk, driveway, median and patching are not to be included in the tonnage determination. This work can also be completed under HMA Plant Mix.

EQUIPMENT REQUIRED: An approved HMA spreading and finishing machine and compaction equipment.

CALCULATION OF WORK RATING: Secondary formula.

6 – CLEANING AND SEALING CRACKS & JOINTS

Consists of routing and sealing cracks for asphaltic and concrete pavements.

EQUIPMENT REQUIRED: Router and melter.

CALCULATION OF WORK RATING: Secondary formula.

7 – SOIL STABILIZATION AND MODIFICATION

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Consists of constructing soil-cement base course and lime modified soils.

EQUIPMENT REQUIRED: Grader, rotary speedmixer, mechanical spreader, water tanker and compaction equipment.

CALCULATION OF WORK RATING: Secondary formula.

8 – AGGREGATE BASES & SURFACES (TYPE A)

Consists of constructing granular sub-base, aggregate base course, aggregate surface course, aggregate shoulders and aggregate-turf pavement. Also includes construction of cement aggregate mixture sub-base, pozzolanic stabilized mixture sub-base, pozzolanic stabilized base course, lime modified soils (disc harrow method), calcium chloride applications, and sub-ballast.

8 – AGGREGATE BASES & SURFACES (TYPE B)

Consists of hauling and spreading aggregate.

EQUIPMENT REQUIRED: Grader or mechanical spreader, and compaction equipment if applicable.

CALCULATION OF WORK RATING: Primary or advanced formula.

<u>Equipment</u>	<u>Equipment Factor (EqF)</u>
Grader and compaction equipment (Type A)	\$375,000 each
Mechanical spreader and compaction equipment (Type A)	\$375,000 each
Grader (Type B)	\$375,000 each
Mechanical spreader (Type B)	\$375,000 each
Widener	\$200,000 each

9 – STRUCTURES (HIGHWAY)

Consists of excavation for structures (includes cofferdams, temporary cribs, etc.), constructing concrete structures (bridges, box culverts, etc.), membrane waterproofing, constructing steel structures (bridges, corrugated structural plate drainage structures, etc.), constructing metal railings, constructing timber structures (bridges, etc.), erection, installation of reinforcement bars, piling (all types), and construction of temporary bridges. This category is also applicable to

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Structures Repair, Demolition, Concrete Construction, Fencing and Signing.

EQUIPMENT REQUIRED: see Structures (Waterway) Equipment.

CALCULATION OF WORK RATING: see Structures (Waterway) Calculation.

9 – STRUCTURES (RAILROAD)

Consists of items listed above. This category is specific to structures carrying railroad transportation.

9 – STRUCTURES (WATERWAY)

Consists of the construction of major structures and appurtenances for water storage and distribution, flood control and recreation. This includes dams, spillways, spillway crest gates, sluiceway, sluiceway gates, canals, channel appurtenances (culverts, flumes, inverted siphons, etc.), pump stations (including mechanical equipment), aqueducts, irrigation structures (checks, dams, gates, etc.), locks and dams, dikes, groins and jetties. This category also includes excavation for structures (includes cofferdams, temporary cribs, etc.), piling (all types), de-watering and Demolition

EQUIPMENT: Bulldozers, front-end loaders, shovels, cranes, backhoe loaders, excavators, pile hammers and bridge deck finishing machines. A crane is the minimum equipment requirement. However, a crane is not required for those contractors requesting a structures rating for \$150,000 or less.

CALCULATION OF WORK RATING: Secondary formula.

10 – STRUCTURES REPAIR

Consists of bridge deck repair or bridge deck removal and replacement. This includes the use of latex modified concrete, polymer concrete, epoxy and other materials for patching, deck overlays, sealing, etc. Also includes membrane waterproofing, constructing metal railings, installation of reinforcement bars, superstructure repairs such as replacement of joints, replacement of bearings, beam straightening (heat or mechanical), repair and retrofit of fracture and fatigue distressed steel girders, member strengthening, etc. Substructure repairs are also included and consist of the use of epoxy, shotcrete and other materials for minor repairs of spalled or deteriorated concrete. This category is also applicable to Concrete Construction, Fencing and Signing. This work can be completed under the Structures (Highway) category.

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EQUIPMENT: Front-end loaders, cranes, backhoe loaders, excavators and bridge deck finishing machines. A crane is the minimum equipment requirement. However, a crane is not required for those contractors requesting a structures repair rating for \$150,000 or less.

CALCULATION OF WORK RATING: Secondary formula.

11 – ANCHORS AND TIEBACKS

Construction of all types of anchors and tiebacks that provide resistance to lateral and uplift forces in bridge abutments, retaining walls, bulkheads, dams, deep excavations and various support systems (underpinning, etc.).

EQUIPMENT REQUIRED: Auger, drilling, or jacking equipment. Grouting equipment to include air compressor, mixing equipment, agitator-type reservoir tank and grout pump.

CALCULATION OF WORK RATING: Secondary formula.

12 – DRAINAGE

Consists of the installation and removal of precast concrete box culverts, installation and removal of pipe culverts and storm sewers, relining of pipe culverts and storm sewers, installation of pipe drains and pipe underdrains, exploration trenches for locating farm underdrains, minor boring and jacking of pipe-in-place, installation of cast iron soil pipe, installation of water mains and water service lines, adjusting sanitary sewers and water service lines, construction of catch basins, manholes, inlets, inspection holes and valve vaults, minor cleaning of catch basins, adjustment and reconstruction of catch basins, manholes, inlets, inspection holes and valve vaults, installation and adjustment of frames and grates, filling existing manholes, catch basins, inlets, wells and drainage structures, moving fire hydrants, moving domestic meter vaults and water service boxes, riprap installation, construction of aggregate ditch, installation of excelsior blanket, fiber mat and fiberglass roving, construction of gabions, slope mattress and revetment mats (riprap or interlocking concrete blocks), construction of trench and backfill for communication cables, ducts and conduits, construction of inverted siphons, construction of flumes, construction of pump stations (including mechanical equipment) and installation of corrugated structural plate drainage structures. This category is also applicable to de-watering projects, well drilling, slurry trench cut-off walls (soil-bentonite or cement-bentonite), and Drainage Cleaning.

EQUIPMENT REQUIRED: Trenching machine or backhoe loader or excavator.

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CALCULATION OF WORK RATING: Secondary formula.

13 – DRAINAGE CLEANING

Consists of cleaning of pipe culverts, storm sewers and catch basins. This work can also be completed under the Drainage Category.

EQUIPMENT REQUIRED: Vacuum or jetting equipment.

CALCULATION OF WORK RATING: Secondary formula.

14 – ELECTRICAL

Consists of the installation of electric cable, duct and conduits, construction of trench and backfill for cables, ducts and conduits, traffic surveillance and control installations, traffic signal installations, installation of light pole, installation of light tower, installation of vapor luminaire, installation of sign lighting, installation of temporary lighting systems, installation of navigational lighting systems, installation of photocell relay service, installation of airport lighting systems, installation of airport beacon towers and airport rotating beacons, and other appropriate illumination systems. This category is also applicable to electronic weigh scale installations, installation and maintenance of motorist call box systems and installation of electrical controls/mechanical equipment for pump stations.

EQUIPMENT REQUIRED: Trenching machine or backhoe loader or excavator or aerial equipment.

CALCULATION OF WORK RATING: Secondary formula.

15 – COVER AND SEAL COATS (TYPE A)

Consists of the application of bituminous materials for priming, road oiling, cover coating and seal coating.

15 – COVER AND SEAL COATS (TYPE B)

Consists of sealing parking lots and driveways.

EQUIPMENT REQUIRED: Distributor (Type A).

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CALCULATION OF WORK RATING: Primary or advanced formula.

<u>Equipment</u>	<u>Equipment Factor (EqF)</u>
Distributor (Type A)	\$400,000 each
Tanker Truck* (Type A)	\$50,000 each

* A maximum of two tanker trucks per distributor will be allowed.

16 – SLURRY APPLICATIONS

Consists of slurry sealing and micro-surfacing.

EQUIPMENT REQUIRED: Slurry or micro-surfacing equipment.

CALCULATION OF WORK RATING: Secondary formula.

17 – CONCRETE CONSTRUCTION

Consists of masonry work or the construction of concrete barrier, curb, gutter, combination curb and gutter, sidewalk, driveway pavement, median, paved ditch, flumes, slope wall, retaining wall, railroad crossing, pavement, base course, base course widening and all types of pavement patching. This category also includes construction of revetment mats (cast-in-place concrete slabs), construction of foundations (light pole, light tower, etc.) and various undersealing projects that allow the voids to be filled by gravity flow. Removal of concrete that consists of any of the aforementioned items or similar items is applicable to this work rating. This category is also applicable to construction of box culverts and other similar miscellaneous drainage structures. The total of pavement, base course and base course widening cannot exceed 15,000 square yards in any one contract. This work can also be completed under the PCC Paving and Structures (Highways, Waterways) categories.

EQUIPMENT: Concrete saws, generators, vibrators, forms, tampers, screeds and concrete placement equipment.

CALCULATION OF WORK RATING: Secondary formula.

18 – LANDSCAPING

Consists of planting trees, shrubs, vines and other materials. This category also includes

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applying fertilizing nutrients, mulching, watering, pruning and selective removal of unwanted plants and Seeding and Sodding.

EQUIPMENT: Auger equipment or hoe, tillers, disks, slope harrows, hydraulic seeders, tractor drawn or mounted seeders, rangeland type grass drill, mulch blowers, tree spade and water trucks. Seed bed preparation and seeding equipment, a tractor loader and a water truck is the minimum equipment requirement.

CALCULATION OF WORK RATING: Secondary formula.

19 – SEEDING AND SODDING

Consists of seeding, sodding, applying fertilizer nutrients, mulching, watering, installation of excelsior blanket, fiber mat and other erosion work. This work can also be completed under the Landscaping category.

EQUIPMENT: Tillers, disks, slope harrows, hydraulic seeders, tractor drawn or mounted seeders, rangeland type grass drill, mulch blowers and water tankers. Seed bed preparation, seeding equipment and a tractor is the minimum equipment requirement.

CALCULATION OF WORK RATING: Secondary formula.

20 – VEGETATION SPRAYING

Consists of the application of chemicals to remove or control vegetation.

EQUIPMENT REQUIRED: Tanker truck with on- and off-road spraying equipment.

CALCULATION OF WORK RATING: Secondary formula. The contractor must have an Illinois Commercial Pesticide Applicator's license. Workers must have an Illinois Commercial Pesticide Operator's license issued by the Illinois Department of Agriculture.

21 – TREE TRIMMING AND SELECTIVE TREE REMOVAL

Consists of commercial arborist work such as trimming and thinning of trees, root pruning and removal of individual trees and tree stumps.

EQUIPMENT REQUIRED: Aerial equipment, brush chipper, pruning tools and stump grinder.

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CALCULATION OF WORK RATING: Secondary formula.

22 – FENCING

Consists of constructing chain link fence, wire fence and wood fence. This category is also applicable to the installation of object markers, delineators and mile post markers. This work can also be completed under the Structural (Highway, Railroad) and Structures Repair categories.

EQUIPMENT: Post hole auger equipment needed for Fencing rating of \$200,000 or more.

CALCULATION OF WORK RATING: Secondary formula.

23 – GUARDRAIL

Consists of constructing steel plate beam guardrail, wood guardrail, cable road guard, posts (including guard posts), pipe handrail and metal railings. Removal of any of the aforementioned items or similar items is applicable to this work category.

EQUIPMENT REQUIRED: Post hammer or post hole auger.

CALCULATION OF WORK RATING: Secondary formula.

24 – GROUTING

Consists of shotcrete construction, lime injection systems, clay grouting, chemical grouting, compaction grouting, cement grouting, jet grouting, asphalt grouting and bituminous or cement fly ash undersealing of concrete pavements. Applicable to soil stabilization and rehabilitation of dams, bridges, sewers, tanks, reservoirs, tunnels, culverts, walls, masonry structures, etc. This category is also applicable to mud jacking, slab jacking and various under-sealing projects.

EQUIPMENT REQUIRED: Air compressor, mixing equipment, agitator-type reservoir tank and grout pump.

CALCULATION OF WORK RATING: Secondary formula.

25 – PAINTING AND CLEANING

Consists of the cleaning, containment and painting of metal surfaces. This includes structural

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steel, sign structures, sign supports, traffic signal hardware, lighting hardware, etc. [This category is also applicable to pressure washing.](#)

EQUIPMENT REQUIRED: Air compressor, sandblast equipment, ~~and~~ paint spraying equipment, [and power washer.](#)

CALCULATION OF WORK RATING: Secondary formula.

26 – SIGNING

Consists of installing, relocating, renovating, refurbishing and cleaning sign panels. This category also includes the installation and relocation of sign supports and sign structures, installation of object markers, installation of delineators and installation of mile post markers. Removal of any of the aforementioned items is also applicable to this work category. This work can also be completed under the Structures (Highway) and Structure Repair categories.

EQUIPMENT REQUIRED: Auger and aerial equipment. A crane will also meet minimum equipment requirements. Auger only will be limited to roadside signing.

CALCULATION OF WORK RATING: Secondary formula.

27 – PAVEMENT MARKINGS (PAINT)

Consists of the installation of paint pavement marking lines, letters and symbols.

EQUIPMENT REQUIRED: Truck mounted or hand operated painting equipment.

CALCULATION OF WORK RATING: Secondary formula.

27 – PAVEMENT MARKINGS (THERMOPLASTIC)

Consists of the installation of thermoplastic pavement marking lines, letters and symbols.

EQUIPMENT REQUIRED: Truck mounted or hand operated equipment that is approved by the Bureau of Operations within the Division of Highways.

CALCULATION OF WORK RATING: Secondary formula.

27 – PAVEMENT MARKINGS (EPOXY)

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Consists of the installation of epoxy pavement marking lines, letters and symbols.

EQUIPMENT REQUIRED: Equipment that is approved by the Bureau of Operations within the Division of Highways.

CALCULATION OF WORK RATING: Secondary formula.

27 – PAVEMENT MARKINGS (POLYUREA)

Consists of the installation of polyurea pavement marking lines, letters and symbols.

EQUIPMENT REQUIRED: Equipment that is approved by the Bureau of Operations within the Division of Highways.

CALCULATION OF WORK RATING: Secondary formula.

27 – PAVEMENT MARKINGS (MODIFIED URETHANE)

Consists of the installation of modified urethane pavement marking lines, letters and symbols.

EQUIPMENT REQUIRED: Equipment that is approved by the Bureau of Operations within the Division of Highways.

CALCULATION OF WORK RATING: Secondary formula.

30 – INSTALLATION OF RAISED PAVEMENT MARKERS

Consists of the installation of raised reflective pavement markers and their removal.

EQUIPMENT REQUIRED: Plunge router or saw.

CALCULATION OF WORK RATING: Secondary formula.

31 – PAVEMENT TEXTURING AND SURFACE REMOVAL

Consists of grooving or grinding PCC pavement or continuously reinforced PCC pavement.

EQUIPMENT REQUIRED: Grooving or grinding equipment.

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CALCULATION OF WORK RATING: Secondary formula.

32 – COLD MILLING, PLANING AND ROTOMILLING

Consists of bituminous surface removal or texturing bituminous pavements. Also applicable to pulverizing and mixing existing bituminous material.

EQUIPMENT REQUIRED: Milling, planing or grinding machine.

CALCULATION OF WORK RATING: Secondary formula.

33 – ERECTION

Consists of erecting structural steel or sign trusses. This work can be completed under the Structures (Highway, Railroad) category.

EQUIPMENT REQUIRED: Crane.

CALCULATION OF WORK RATING: Secondary formula.

34 – DEMOLITION

Consists of the removal of timber, steel and concrete structures and buildings. This work can be completed under the Structures (Highway, Railroad, Waterway) and Earthwork categories.

EQUIPMENT REQUIRED: Crane or excavator or front-end loader, backhoe loader or bulldozer.

CALCULATION OF WORK RATING: Secondary formula.

35 – FABRICATION

Consists of fabricating, delivering and storing structural steel.

EQUIPMENT REQUIRED: Fabrication plant.

CALCULATION OF WORK RATING: Secondary formula.

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36 – TUNNEL EXCAVATION

Consists of earth and rock excavation for tunnels, and construction of liner plate shafts, steel sheeted shafts and wood sheeted shafts. This category also includes rock bolting and major boring and jacking of pipe-in-place.

EQUIPMENT REQUIRED: Tunnel boring machine.

CALCULATION OF WORK RATING: Secondary formula.

37 – EXPRESSWAY CLEANING

Consists of sweeping expressways and arterial routes.

EQUIPMENT REQUIRED: Motorized street sweeping equipment.

CALCULATION OF WORK RATING: Secondary formula.

38 – RAILROAD (TRACK) CONSTRUCTION

Consists of sub-ballast construction, ballast construction, installation of crossites and installation of steel rails.

EQUIPMENT REQUIRED: Ballast regulator, tamper and lifting equipment.

CALCULATION OF WORK RATING: Secondary formula.

39 – MARINE CONSTRUCTION

Consists of the construction of harbors and docking facilities on lakes or rivers. This includes breakwater structures, groins, jetties, seawalls, major revetments (riprap, interlocking concrete blocks and cast-in-place concrete slabs), bulkheads, piers, wharves, fenders and dolphins. This work category is also applicable to excavation for structures (includes cofferdams, temporary cribs, etc.), piling (all types), de-watering, mechanical dredging, underwater inspection and underwater repair.

EQUIPMENT REQUIRED: Barge and barge-mounted crane.

CALCULATION OF WORK RATING: Secondary formula.

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40 – HYDRAULIC DREDGING

Dredging of various waterways by the use of pumping equipment.

EQUIPMENT REQUIRED: Barge and pumping equipment.

CALCULATION OF WORK RATING: Secondary formula.

41 – HOT (IN-PLACE) RECYCLING

A road construction technique that involves a single-pass or a two-pass operation that scarifies and rejuvenates the existing pavement material or combines existing pavement material with virgin material.

EQUIPMENT REQUIRED: Either a single recycle machine or a recycling train capable of heating, scarifying, remixing and relaying pavement material. Compaction equipment is also required.

CALCULATION OF WORK RATING: Secondary formula.

42 – COLD (IN-PLACE) RECYCLING

A road construction technique that reuses existing pavement material.

EQUIPMENT REQUIRED: Emulsion tanker truck, recycle machine, paver and compaction equipment.

CALCULATION OF WORK RATING: Secondary formula.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Permits
- 2) Code Citation: 35 Ill. Adm. Code 309
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
309.104	Amendment
309.201	Amendment
309.202	Amendment
309.203	Amendment
309.204	Amendment
309.242	Amendment
309.263	Amendment
- 4) Statutory Authority: Implementing Section 25 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/25 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Permits issued by Illinois under the Federal National Pollutant Discharge Elimination System program and water pollution permits issued by the state under its own water pollution program.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)]
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments

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must be filed with the Clerk of the Board. Public comments should reference Docket R15-24 and be addressed to:

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

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

Interested persons may request copies of the Board's opinion and order in R15-24 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information, contact hearing officer Jason James at 312/814-6929 or e-mail at Jason.James@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation with an NPDES or state water permit may be affected.
 - 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 2015.

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

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NOTICE OF PROPOSED AMENDMENTS

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

SUBPART A: NPDES PERMITS

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

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

SUBPART B: OTHER PERMITS

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

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

309.APPENDIX A References to Previous Rules

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

SOURCE: Adopted in R71-14, at 4 PCB 3, March 7, 1972; amended in R73-11, 12, at 14 PCB 661, December 5, 1974, at 16 PCB 511, April 24, 1975, and at 28 PCB 509, December 20, 1977; amended in R73-11, 12, at 29 PCB 477, at 2 Ill. Reg. 16, p. 20, effective April 20, 1978; amended in R79-13, at 39 PCB 263, at 4 Ill. Reg. 34, p. 159, effective August 7, 1980; amended in R77-12B, at 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R76-21, at 44 PCB 203, at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended in R82-5, 10, at 54 PCB 411, at 8 Ill. Reg. 1612, effective January 18, 1984; amended in R86-44 at 12 Ill. Reg. 2495, effective January 13, 1988; amended in R88-1 at 13 Ill. Reg. 5993, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2892, effective February 13, 1990; amended in R91-5 at 16 Ill. Reg. 7339, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5526, effective April 1, 1996; amended in R99-8 at 23 Ill. Reg. 11287, effective August 26, 1999; amended in R02-11 at 27 Ill. Reg. 202, effective December 20, 2002; amended in R03-19 at 28 Ill. Reg. 7310, effective May 7, 2004; amended in R07-9 at 32 Ill. Reg. 14995, effective September 8, 2008; amended in R08-09(D) at 39 Ill. Reg. 9433, effective June 26, 2015; amended in R15-24 at 40 Ill. Reg. _____, effective _____.

SUBPART A: NPDES PERMITS

Section 309.104 Renewal

- a) Any permittee who wishes to continue to discharge after the expiration date of ~~the~~this NPDES Permit ~~must~~ timely~~shall~~ apply for reissuance of the permit ~~not less than 180 days prior to the expiration date of the permit.~~
 - 1) A permittee has submitted a timely application for a new permit when:

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- A) The permittee submits:
- i) an application 180 days prior to the expiration date of the existing permit; or
 - ii) a request for a waiver in writing to the Agency, the Agency grants a written waiver to submit the application less than 180 days prior to the expiration date of the existing permit, and the applicant submits an application within the timeframe listed in the waiver request. Such a waiver request must include the permittee's reasonably justifiable causes for not meeting the 180 day timeframe. A waiver of the 180 day submittal requirement must be filed a minimum of 60 days prior to expiration of the permit, and shall include the date by which the permittee will submit the application.
- B) The Agency shall not grant a waiver for applications to be submitted later than the expiration date of the existing permit.
- C) Any Agency decision to deny a waiver request must be made within 21 days after receipt of the waiver request.
- 2) The terms and conditions of an expiring permit remain effective and enforceable against the discharger until the Agency takes final action on the pending permit application, only if:
- A) The permittee has submitted a timely application pursuant to subsection (a)(1); and
 - B) The Agency, through no fault of the permittee, does not issue a new permit on or before the expiration date of the previous permit.
- b) All permittees that timely apply for an NPDES permit renewal must pay an annual NPDES discharge fee pursuant to Section 12.5 of the Act.
- c) The Agency ~~must~~shall circulate public notice and provide opportunity for public hearing, as provided for in this Subpart A, in the same manner as for a new permit application.

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(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART B: OTHER PERMITS

Section 309.201 Preamble

- a) This Subpart B establishes basic rules for the issuance of permits for the construction, modification and operation of treatment works, pretreatment works, sewers, wastewater sources and other discharges ~~that~~which are not required to have NPDES Permits.
- b) The following discharges are exempt from the operating permit requirement of this Subpart. However, these discharges may be subject to the construction permit requirement.
- 1) Discharges for which a pretreatment permit has been issued by the Agency pursuant to 35 Ill. Adm. Code 310;
 - 2) Discharges for which a pretreatment permit has been issued by USEPA pursuant to the federal Clean Water Act; or
 - 3) Discharges for which an authorization ~~to discharge~~ has been issued by a publicly owned treatment works (POTW) with ~~a an approved~~ pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA pursuant to federal law. ~~are exempt from the operating permit requirement of this Subpart. However, such discharges may be subject to the construction permit requirements.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.202 Construction Permits

Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

- a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued

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by the Agency, except as provided in subsections (c) and (d)~~paragraph (b)~~.

- b) For groundwater remediation systems, with or without pretreatment, a permit is required for construction of:
- 1) A new sewer to a publicly owned or publicly regulated sanitary or combined sewer; or
 - 2) a wastewater source that discharges to a publicly owned or publicly regulated sanitary or combined sewer.
- c) Construction permits shall not be required for the following:
- 1) Storm sewers that transport only land runoff; ~~or~~
 - 2) Any treatment works, sewer or wastewater source designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day (5700 l/day) of domestic sewage and which will discharge, if at all, directly to a publicly owned or publicly regulated sanitary or combined sewer; ~~or~~
 - 3) Any sewer required by statute to secure a permit pursuant to Section 3 of the Mobile Home Park Act [210 ILCS 115]"An Act to provide for, license and regulate mobile homes and mobile home parks", P.A. 77-1472, (Ill. Rev. Stat. 1981, ch. 111½, par. 713); ~~or~~
 - 4) Any treatment works, pretreatment works, sewer or wastewater source that, on the effective date of this Subpart B, is being constructed or will be constructed under the authorization of a permit already issued by the Agency or its predecessors; provided however, that all construction must be completed within four years from the effective date of this Subpart B; ~~or~~
 - 5) Privately owned sewers tributary to industrial treatment works owned by the same person if the additional waste load does not exceed the permitted design capacity of the industrial treatment works; ~~or~~
 - 6) Cooling towers, oil/water separators, pH adjustment facilities without additional pretreatment, groundwater remediation system pretreatment,

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reverse osmosis treatment for industrial source water, multi-media filtration for industrial source water, disposable cartridge type (or similar) filtration systems, ion-exchange systems for industrial source waters, and all associated pipes, pumps, and appurtenances necessary for the installation and operation of these permit exempt treatment systems.

- de) No person ~~without a construction permit issued by the Agency~~ shall cause or allow the construction of any pretreatment works or cause or allow the modification of any existing pretreatment works without a construction permit issued by the Agency, unless exempt pursuant to Section 309.202(c) if those such pretreatment works, after construction or modification, will:
- 1) Discharge toxic pollutants, as defined in Section 502(13) of the CWA, or pollutants which may interfere with the treatment process into the receiving treatment works or be subject to regulations promulgated under ~~section~~Section 307 of the Clean Water Act (CWA); or
 - 2) Discharge 15% or more of the total hydraulic flow received by the treatment works; or
 - 3) Discharge 15% or more of the total biological loading received by the treatment works as measured by the 5-day biochemical oxygen demand~~;~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.203 Operating Permits; New or Modified Sources

- a) No person shall cause or allow the use or operation of any treatment works, sewer, pretreatment works or wastewater source for which a construction permit is required under Section 309.202 without an operating permit issued by the Agency, except as may be authorized by the construction permit.
- b) No operating permit is required under this Section for any discharge:
 - 1) For which an NPDES permit is required; ~~or~~
 - 2) For which a pretreatment permit has been issued by the Agency, pursuant to 35 Ill. Adm. Code 310;

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- 3) For which a pretreatment permit has been issued by USEPA pursuant to federal law; or
- 4) For~~for~~ which an authorization to discharge has been issued by a POTW with ~~an approved~~ pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA under federal law.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.204 Operating Permits; Existing Sources

- a) No person shall cause or allow the use or operation of any treatment works, pretreatment works or wastewater source without an operating permit issued by the Agency, except as provided in subsections (b), (c) and (d).
- b) No operating permit is required under this Section for any discharge:
 - 1) For which an NPDES permit is required;~~or~~
 - 2) For which a pretreatment permit has been issued by the Agency pursuant to 35 Ill. Adm. Code 310;
 - 3) For which a pretreatment permit has been issued by USEPA pursuant to federal law; or
 - 4) For~~for~~ which an authorization to discharge has been issued by a POTW with ~~an approved~~ pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA under federal law.
- c) Operating permits are not required for treatment works and wastewater sources that are designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day 5 (5700 l/day) of domestic sewage and ~~that which~~ will discharge, if at all, directly to a publicly owned or publicly regulated sanitary or combined sewer.
- d) Operating permits are not required for those pretreatment works or wastewater sources discharging to a sewer tributary to a treatment works, or directly to a

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treatment works, that-which will not:

- 1) Discharge toxic pollutants, as defined in sectionSection 502(13) of the CWA, or pollutants thatwhich may interfere with the treatment process into the receiving treatment works or be subject to regulations promulgated under sectionSection 307 of the ~~Clean Water Act (CWA); or~~
- 2) Discharge 15% or more of the total hydraulic flow received by the treatment works; or
- 3) Discharge 15% or more of the total biological loading received by the treatment works as measured by the 5-day biochemical oxygen demand.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.242 Duration and Termination of Permits Issued Under Subpart B

- a) Construction permits for sewers and wastewater sources mustshall require that construction be completed within two years. Construction permits for treatment works and pretreatment works mustshall require that construction be completed within three years. In situations in whichwhere the magnitude and complexity of the project require it, the Agency may issue a construction permit, requiring completion within a period not to exceed five years.
- b) Except as indicated in subsection (c), no operating permit shall have duration in excess of five years. ~~All operating permits other than those issued under Section 309.203 for newly constructed sewers shall have a duration not to exceed five years.~~ The Agency may issue operating permits for as short a period of time as may be necessary in order to facilitate basin planning, to coordinate operating permits with future compliance deadlines, to maintain intensive control over new or experimental processes and to provide for emergency situations.
- c) The Agency may issue operating permits under Section 309.203 for sewers, wastewater sources, and pretreatment works for the lifetime of the sewer or the pretreatment works.
- d) Notwithstanding subsections (b) and (c), any operating permit subject to this Subpart must expire upon the issuance of a modified or renewed permit issued by the Agency.

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- e) A permittee may request termination of a permit by submitting the request in writing to the Agency on a form and in a format prescribed by the Agency. The Agency must send written confirmation of the termination to the permittee by certified or registered mail. Termination is effective on the date of written confirmation from the Agency.
- f) A permit may be terminated by the Agency upon determination that a facility is no longer in operation or existence. The Agency must send written notice via certified or registered mail to the last known address on the permit stating that the permitted system appears no longer in operation or existence. The permit must terminate 60 days after the date of notification unless the permittee communicates the desire for the permit to stay in effect.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.263 Modification or Renewal of Permits

- a) Any permit issued by the Agency under this Subpart B may be modified or renewed to make its provisions compatible with any new regulation adopted by the Board.
- b) Persons with operating permits for pretreatment works subject to this Subpart must obtain a modified permit prior to any of the following changes at the facility:
- 1) A modification of permitted wastewater characteristics, quantity, or quality;
 - 2) A change in facility ownership, name, or address, so that the application or existing permit is no longer accurate; or
 - 3) A change in operations that will result in the permittee's noncompliance with the Act, a Board Regulation, or an existing permit condition.
- c) The Agency may require the modification or renewal of any operating permit subject to this Subpart for reasons including, but not limited to:
- 1) A change in the requirements applicable to the permittee;
 - 2) The information on the permittee's application is inaccurate; or

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- 3) Information that the permittee may not be in compliance with the Act, a Board regulation, or an existing permit condition.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Joint Rules of the Human Rights Commission and Department of Human Rights: Rules on Pregnancy Discrimination and Accommodation in Employment
- 2) Code Citation: 56 Ill. Adm. Code 2535
- 3)

<u>Section Numbers</u> :	<u>Adopted Actions</u> :
2535.10	New Section
2535.20	New Section
2535.100	New Section
2535.110	New Section
2535.120	New Section
2535.130	New Section
2535.140	New Section
2535.150	New Section
2535.160	New Section
2535.170	New Section
2535.200	New Section
2535.210	New Section
2535.220	New Section
2535.300	New Section
- 4) Statutory Authority: Implementing Sections 2-102(I), (J) and (K), and authorized by Sections 7-101(A) and 8-102(E) of the Illinois Human Rights Act [775 ILCS 5/7-101A)]
- 5) Effective Date of Rules: November 4, 2015
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these rules contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: July 17, 2015; 39 Ill. Reg. 9682
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No

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- 11) Differences between Proposal and Final Version: In Section 2535.20, in the definition of "Common condition related to pregnancy or childbirth", after "sleeplessness," added "fatigue, lifting impairments, physical imbalance,".

In the first line of Section 2535.100(b), after "include", added ", but are not limited to:"

In Section 2535.100(b)(2), after, "qualified", added "job applicant or" and after "to", added "be considered for the position the applicant desires or to".

In the first line of Section 2535.100(b)(3), following "include" and added ", but are not limited to:".

In Section 2535.110(b), after "employer", added "if it is prohibitively expensive or disruptive when considered in light" and struck "will involve consideration".

In Section 2535.120(c), added Section (2) stating:

- "2) The alternative accommodation would allow the job applicant or employee to perform their current position without a change in the job applicant's or employee's earnings or benefits, or the alternative accommodation would have the same or a lesser impact upon the job applicant's or employee's earnings or benefits as the accommodation requested by the employee;" The Department also renumbered subsections "2" to "3" and "3" to "4".

In what is now Section 2335.210(c)(4), after provider, added ", or if otherwise within the restrictions or recommendations the employee's health care provider".

In what is now 2353.120(d), added the following subsections:

- "d) An employer has met its duty to reasonably accommodate a job applicant or employee by offering in good faith an alternative accommodation which satisfies this Section and by engaging in a meaningful discussion regarding the alternative accommodation. However, an employer may not require the job applicant or employee to accept the alternative accommodation if the job applicant or employee chooses to reject it.
- e) Nothing in this Section prohibits a job applicant or employee from modifying their reasonable accommodation request if the original reasonable

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accommodation request is no longer necessary or adequate. Any requests to modify a previous reasonable accommodation request should be considered as a new or independent request."

Changed Section "2535.12(d)" to "2535.12(f)".

At the end of Section 2535.140(f) added: "An employer is not required to provide any paid time off benefits such as vacation pay, sick time or similar benefits that would otherwise accrue if the employee was not on leave, unless the employer allows for accrual of such benefits for other classes of employees under similar circumstances."

In Section 2535.220(c), after the second reference to "employer", added "without first satisfying the employer's obligation to make reasonable accommodations for the employee's pregnancy condition pursuant to Subpart B, including, but not limited to, exploring whether a reasonable accommodation other than a forced leave can be provided to the employee and engaging in the interactive process to determine the effective reasonable accommodation." and deleted "if another reasonable accommodation can be provided to the employee to accommodate her pregnancy condition."

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rules: Pursuant to PA 98-1050, the rules require employers with pregnant employees/workers, including, but not limited to small businesses, to provide reasonable accommodations to those employees/workers. Further, the proposed rules prohibit employers from discriminating against pregnant employees/workers in employment and require that employers post a pregnancy discrimination notice.
- 16) Information and questions regarding these adopted rules shall be directed to:

David T. Rothal
Staff Attorney
Illinois Department of Human Rights – Legal Division
100 W. Randolph St., Ste. 10-100
Chicago IL 60601

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312/814-6257

866/740-3953 (TTY)

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

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TITLE 56: LABOR AND EMPLOYMENT
CHAPTER II: DEPARTMENT OF HUMAN RIGHTS

PART 2535

JOINT RULES OF THE HUMAN RIGHTS COMMISSION AND DEPARTMENT OF
HUMAN RIGHTS: RULES ON PREGNANCY DISCRIMINATION
AND ACCOMMODATION IN EMPLOYMENT

SUBPART A: INTERPRETATIONS

Section	Purpose
2535.10	Purpose
2535.20	Definitions

SUBPART B: REASONABLE ACCOMMODATION

2535.100	Duty to Accommodate
2535.110	Undue Hardship
2535.120	Interactive Process
2535.130	Temporary Transfer or Reassignment as an Accommodation
2535.140	Time Off or Leave as an Accommodation
2535.150	Duties of the Job Applicant or Employee Requesting the Accommodation
2535.160	Duties of the Employer
2535.170	Documentation of the Need for an Accommodation

SUBPART C: PROHIBITION AGAINST DISCRIMINATION

2535.200	Discrimination on the Basis of Pregnancy in Employment
2535.210	Retaliation for Requesting an Accommodation
2535.220	Forced Accommodation or Leave

SUBPART D: NOTICE

2535.300	Posting of Pregnancy Discrimination Notice
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AUTHORITY: Implementing Sections 2-102(I), (J) and (K), and authorized by Sections 7-101(A) and 8-102(E), of the Illinois Human Rights Act [775 ILCS 5/2-102, 7-101 and 8-102].

SOURCE: Adopted at 39 Ill. Reg. 15116, effective November 4, 2015.

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SUBPART A: INTERPRETATIONS

Section 2535.10 Purpose

This Part interprets the provisions of Section 2-102(I), (J) and (K) of the Illinois Human Rights Act [775 ILCS 5] prohibiting discrimination in employment on the basis of pregnancy, requiring employers to reasonably accommodate a job applicant's or employee's pregnancy, and requiring employers to notify employees of their rights under these statutes. For purposes of these prohibitions against discrimination on the basis of pregnancy, Section 2-102(I), (J) and (K) apply to all units of State and local government in Illinois, to all persons employing one or more individuals, and to all employment agencies and labor organizations (see Section 2-101(B), (C) and (D) of the Act).

Section 2535.20 Definitions

Act – the Illinois Human Rights Act [775 ILCS 5].

Commission – the Illinois Human Rights Commission.

Common condition related to pregnancy or childbirth – a condition that commonly develops as a result of pregnancy or childbirth, or the physiological changes or processes that accompany pregnancy or childbirth. Examples of common conditions related to pregnancy or childbirth include, but are not limited to, backaches, cramping, headaches, morning sickness or nausea, frequent urination, sleeplessness, fatigue, lifting impairments, physical imbalance, swollen ankles, feet or fingers, and lactation.

Department – the Illinois Department of Human Rights.

Health care provider – a person who provides medical or health services related to pregnancy or childbirth, including, but not limited to, obstetricians or gynecologists, perinatologists, family physicians, physician assistants, nurse practitioners, certified nurse midwives, and certified doulas.

Medical condition related to pregnancy or childbirth – a physical or mental impairment, condition, feature or attribute that develops as a result of or in conjunction with pregnancy or childbirth. Medical conditions related to pregnancy or childbirth need not constitute a disability within the meaning of the

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Act and may be transitory in nature. Examples of medical conditions related to pregnancy or childbirth include, but are not limited, to gestational diabetes, preeclampsia, post-partum depression, ectopic pregnancy, miscarriage, hypothyroidism and toxoplasmosis.

Pregnancy condition – pregnancy, childbirth or medical or common condition related to pregnancy or childbirth.

Reasonable accommodation – shall have the same meaning ascribed in Section 2-102(J) of the Act.

Undue hardship – shall have the same meaning ascribed in Section 2-102(J) of the Act.

SUBPART B: REASONABLE ACCOMMODATION

Section 2535.100 Duty to Accommodate

- a) Employers and labor organizations must make reasonable accommodations for any medical or common condition related to pregnancy or childbirth, unless the employer or labor organization can demonstrate that the accommodation would impose an undue hardship on the ordinary operations of the business of the employer or labor organization.
- b) Reasonable accommodations include, but are not limited to:
 - 1) Modifications or adjustments to a job application process that enable a qualified job applicant affected by a pregnancy condition, to be considered for the position;
 - 2) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position is customarily performed, that enable a qualified job applicant or employee affected by a pregnancy condition to be considered for the position the applicant desires or to perform the essential functions of her position;
 - 3) Modifications or adjustments to an employee's full or part-time employment status, work schedule, job structure or job assignments, or a temporary transfer to another position, if the employee affected by a

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pregnancy condition is unable to perform the essential functions of her position;

- 4) Modifications or adjustments that enable an employee affected by a pregnancy condition to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees.
- c) Examples of reasonable accommodations include, but are not limited to:
- 1) More frequent or longer bathroom breaks, breaks for increased water intake, breaks for periodic rests and seating;
 - 2) Private non-bathroom space for expressing breast milk and breastfeeding;
 - 3) Assistance with manual labor, light duty, temporary transfer to a less strenuous or hazardous position, and reassignment to a vacant position;
 - 4) Making existing facilities and worksites readily accessible and usable;
 - 5) Job restructuring, part-time or modified work schedules, acquisition or modifications of equipment or devices, and appropriate adjustment or modification of examinations, training materials or policies; and
 - 6) Time off to recover from conditions related to childbirth, and leave necessitated by a pregnancy condition.
- d) Accommodations of a personal nature (e.g., providing a breast pump) need not be provided.
- e) No employer is required to:
- 1) Create additional employment that the employer would not otherwise have created to accommodate an employee affected by a pregnancy condition, unless the employer does so or would do so for other classes of employees who need accommodation.
 - 2) Discharge any employee, or transfer any employee with more seniority, to accommodate an employee under this Section, unless the employer does

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so or would do so to accommodate other classes of employees who need it.

- 3) Transfer or promote an employee who is not qualified to perform the job as an accommodation under this Section, unless the employer does so or would do so to accommodate other classes of employees who need it.

Section 2535.110 Undue Hardship

- a) The employer has the burden of proving undue hardship.
- b) An accommodation imposes an undue hardship on the ordinary operation of the business of the employer if it is prohibitively expensive or disruptive when considered in light of the following factors:
 - 1) The nature and cost of the accommodation needed;
 - 2) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at the facility, the effect on expenses and resources, or the impact otherwise of the accommodation upon the operations of the facility;
 - 3) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees, and the number, type and location of its facilities; and
 - 4) The type of operation or operations of the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship to the employer of the facility or facilities in question.
- c) Evidence that the employer provides or would be required to provide a similar accommodation to similarly situated job applicants or employees creates a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.

Section 2535.120 Interactive Process

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- a) To determine the appropriate reasonable accommodation, the employer and job applicant or employee shall engage in a timely, good faith, meaningful, exchange to determine the effective reasonable accommodation. This process should identify the needs and limitations resulting from the pregnancy condition, and the potential reasonable accommodations that could meet those needs or overcome those limitations. If the employer believes the requested accommodation will impose an undue hardship, this process should also cover whether there is any less restrictive alternative available that could accommodate the job applicant's or employee's pregnancy condition in lieu of the requested accommodation.
- b) During the interactive process, the employer and job applicant or employee should first explore whether there are any accommodations that would permit the job applicant or employee to perform the essential functions of the applied for or current position. If no such accommodation is available, the employer and job applicant or employee should explore whether there are any accommodations that would permit the job applicant or employee to work in another capacity for the duration of the pregnancy or the recovery from the pregnancy condition. Examples of accommodations that may allow a job applicant or employee to begin work or continue working include, but are not limited to, a temporary transfer, reassignment or job restructuring.
- c) During the interactive process, an employer may offer alternate accommodations to the job applicant or employee. A job applicant's or employee's refusal to accept an alternate accommodation offered by the employer during the interactive process may constitute evidence that the job applicant or employee is not participating in good faith during the interactive process if:
 - 1) The alternative accommodation would adequately accommodate the job applicant's or employee's pregnancy condition;
 - 2) The alternative accommodation would allow the job applicant or employee to perform her current position without a change in the job applicant's or employee's earnings or benefits, or the alternative accommodation would have the same or a lesser impact upon the job applicant's or employee's earnings or benefits as the accommodation requested by the employee;
 - 3) The alternative accommodation offered by the employer would impose a lesser disruption to the operations of the employer; and

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- 4) The alternative accommodation is approved by the job applicant's or employee's health care provider, or if otherwise within the restrictions or recommendations of the employee's health care provider.
- d) An employer has met its duty to reasonably accommodate a job applicant or employee by offering in good faith an alternative accommodation that satisfies this Section and by engaging in a meaningful discussion regarding the alternative accommodation. However, an employer may not require the job applicant or employee to accept the alternative accommodation if the job applicant or employee chooses to reject it.
- e) Nothing in this Section prohibits a job applicant or employee from modifying her reasonable accommodation request if the original reasonable accommodation request is no longer necessary or adequate. Any requests to modify a previous reasonable accommodation request should be considered as a new or independent request.
- f) In the event that a requested accommodation would impose an undue hardship on the employer after the employer and job applicant or employee had engaged in the interactive process, a job applicant or employee may provide her own accommodation at her own expense, provided that the accommodation does not unduly disrupt the ordinary conduct of the employer's business.

Section 2535.130 Temporary Transfer or Reassignment as an Accommodation

- a) If, as a result of a job applicant's or employee's pregnancy condition, the job applicant or employee is unable to perform the essential functions of her current position, the job applicant or employee may request accommodation. Examples of accommodations that may allow a job applicant or employee to work include, but are not limited to:
 - 1) A temporary transfer to either a less strenuous or less hazardous position, or to a light duty position;
 - 2) A temporary reassignment to a vacant position;
 - 3) A temporary restructuring of the position sought or held;

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- 4) A temporary modification of the job applicant's or employee's work schedule; or
 - 5) A temporary transfer to a part-time position or to part-time status.
- b) An employer is not obligated to transfer or reassign a job applicant or employee to a position for which the job applicant or employee is not qualified and able to perform the duties of the position, unless the employer does so or would do so to accommodate other classes of employees who need it.
 - c) An employer may reduce the rate of pay of a job applicant or employee who receives a temporary job transfer or reassignment to another position at the rate of pay of the position into which the job applicant or employee transfers, unless the employer did not do so or would not do so for other classes of job applicants or employees under similar circumstances. If the rate of pay of the position into which the job applicant or employee transfers is compensated at a rate of pay higher than the job applicant's or employee's previous position, the employer must compensate the job applicant or employee at the higher rate of pay while the job applicant or employee is performing the new position.
 - d) An employer may reduce the rate of pay of an employee whose position is temporarily restructured or whose schedule is modified, or who is reduced to part-time status to reflect the new or modified job duties, schedule or part-time status, unless the employer did not do so or would not do so for other classes of employees under similar circumstances. If an employer chooses to reduce a job applicant's or employee's pay pursuant to this Section, the burden is on the employer to show that the change in pay is justified by and consistent with the change in job duties, schedule or employment status.
 - e) An employer may not reduce the fringe benefits, including insurance coverage, because the employee was temporarily transferred or reassigned to another position, placed on light duty, reduced to part-time status, or placed on a modified work schedule, or because the employee's position was restructured, unless the employer can demonstrate that not doing so would impose an undue hardship on the ordinary operation of the business of the employer.

Section 2535.140 Time Off or Leave as an Accommodation

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- a) An employer must grant a job applicant's or employee's request for time off or a leave of absence necessitated by the employee's pregnancy condition as an accommodation, unless the employer can demonstrate that there is another effective accommodation that would enable the employee to continue working, or the accommodation would impose an undue hardship on the ordinary operation of the business of the employer.
- b) If the necessity for time off or leave is foreseeable, the job applicant or employee shall provide the employer with prior notice of the expected need for time off or leave in a manner that is reasonable and practicable, unless the employer does not or would not require prior notice for other classes of employees taking time off or leave.
- c) If the necessity for time off or leave is foreseeable based on planned medical treatment or supervision, the job applicant or employee shall also make a reasonable effort to schedule the treatment or supervision so as not to unduly disrupt the operations of the employer, subject to the approval of the job applicant's or employee's health care provider.
- d) If the necessity for time off or leave is not foreseeable or expected, the job applicant or employee shall provide notice to the employer as soon as possible and practical, and in a manner that is reasonable and practicable.
- e) An employee may choose to use accrued paid leave to cover some or all of the time off or leave. An employer is not required to provide paid leave for the duration of the time off or leave unless the paid leave is required by other laws or the employer does so for other classes of employees under similar circumstances.
- f) When the need for an accommodation ceases, an employer shall reinstate an employee who took time off or a leave of absence under this Section to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other applicable service credits as of the date the employee went on a leave of absence, unless the employer can demonstrate that doing so would impose an undue hardship on the ordinary operation of the business of the employer. An employer is not required to provide any paid time off benefits such as vacation pay, sick time or similar benefits that would otherwise accrue if the employee was not on leave, unless the employer allows for accrual of such benefits for other classes of employees under similar circumstances.

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Section 2535.150 Duties of the Job Applicant or Employee Requesting the Accommodation

- a) It is the duty of the job applicant or employee seeking a reasonable accommodation to:
 - 1) Apprise the employer of the job applicant's or employee's pregnancy condition;
 - 2) Cooperate in any ensuing discussion and evaluation aimed at determining the possible or feasible accommodations; and
 - 3) Submit to the employer any documentation that is requested in accordance with this Subpart.
- b) A job applicant or employee is not required to accept an accommodation when the job applicant or employee did not request the accommodation and the job applicant or employee chooses not to accept the employer's accommodation.

Section 2535.160 Duties of the Employer

- a) Once the job applicant or employee has initiated a request for accommodation for her pregnancy condition, it is the duty of the employer to provide the necessary accommodation in conformance with this Part.
- b) An employer has an obligation to provide timely responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

Section 2535.170 Documentation of the Need for an Accommodation

- a) An employer is entitled to obtain only the following information to evaluate if a requested reasonable accommodation may be necessary because of a job applicant's or employee's pregnancy condition:
 - 1) The medical justification for the requested accommodation;
 - 2) A description of the reasonable accommodation medically advisable;

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- 3) The date the reasonable accommodation became medically advisable; and
 - 4) The probable duration of the reasonable accommodation.
- b) An employer may request documentation from the job applicant's or employee's health care provider concerning the need for the requested accommodation if:
- 1) The employer would request the same or similar documentation from a job applicant or employee regarding the need for a reasonable accommodation for conditions related to disability;
 - 2) The employer's request for documentation is job-related and consistent with business necessity; and
 - 3) The information sought is not known or readily apparent to the employer.
- c) The determination of whether an employer's request for documentation from the job applicant's or employee's health care provider concerning the need for a reasonable accommodation is job-related or consistent with business necessity will depend upon the totality of the circumstances, including, but not limited to the following factors:
- 1) Whether the need for a reasonable accommodation is readily apparent;
 - 2) Whether the job applicant or employee is able to explain the relationship between the requested accommodation and her pregnancy condition;
 - 3) The employer's reasons for requesting the information; and
 - 4) The degree to which the requested accommodation would impact the ordinary operations of the employer's business if it were granted by the employer.
- d) If the employee needs the reasonable accommodation beyond the probable duration identified by the job applicant's or employee's healthcare provider, the employer may request additional information from the job applicant's or employee's health care provider consistent with this Part. An employer must

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continue to accommodate the job applicant or employee while the employer is requesting additional documentation from the employee's healthcare provider.

- e) An employer may require documentation by the employee's healthcare provider to determine compliance with other laws.

SUBPART C: PROHIBITION AGAINST DISCRIMINATION

Section 2535.200 Discrimination on the Basis of Pregnancy in Employment

- a) An employer may not refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of a pregnancy condition.
- b) An employer shall treat women affected by a pregnancy condition the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other job applicants or employees not so affected but similar in their ability or in ability to work, regardless of the source of the inability to work or employment classification or status.
- c) An employer may not deny employment opportunities or benefits to, or otherwise take an adverse action against, a job applicant or employee based on the job applicant's or employee's past pregnancy condition or because of the employee's potential or intention to become pregnant.

Section 2535.210 Retaliation for Requesting an Accommodation

- a) An employer may not deny employment opportunities or benefits, or otherwise take an adverse action against a qualified job applicant or employee because the job applicant or employee requested or needed an accommodation for her known pregnancy condition.
- b) An employer may not retaliate against a person because the person requested, attempted to request, used or attempted to use a reasonable accommodation for her pregnancy condition.

Section 2535.220 Forced Accommodation or Leave

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- a) An employer shall not require a job applicant or employee affected by her pregnancy condition to accept an accommodation when the job applicant or employee did not request the accommodation and the job applicant or employee chooses not to accept the employer's accommodation.
- b) An employer may suggest alternative accommodations to the job applicant or employee as part of the interactive process set forth in Section 2535.120.
- c) An employer may not require an employee to take leave under any leave law or policy of the employer without first satisfying the employer's obligation to make reasonable accommodations for the employee's pregnancy condition pursuant to Subpart B, including, but not limited to, exploring whether a reasonable accommodation other than a forced leave can be provided to the employee and engaging in the interactive process to determine the effective reasonable accommodation.

SUBPART D: NOTICE

Section 2535.300 Posting of Pregnancy Discrimination Notice

- a) An employer must post and keep posted in a conspicuous location on the premises of the employer where notices to employees are customarily posted a notice approved by the Department.
 - 1) The notice approved by the Department will summarize the prohibition against discrimination regarding pregnancy and an employee's right to a reasonable accommodation for her pregnancy condition, including information pertaining to the filing of a charge, the right to be free from unlawful discrimination, and the right to certain reasonable accommodations.
 - 2) The Department will make the notice available for download from its website at http://www2.illinois.gov/dhr/Publications/Pages/Pregnancy_Rights_Notice_Requirement.aspx.
- b) An employer must include in any employee handbook information concerning a job applicant's or employee's rights regarding pregnancy in the workplace. An employer's handbook that contains the same information as set forth in the Department's notice will be sufficient to comply with this subsection. However,

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nothing in this subsection prohibits the employer from providing additional information.

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- 1) Heading of the Part: Office of Inspector General Investigations of Alleged Abuse or Neglect in State-Operated Facilities and Community Agencies
- 2) Code Citation: 59 Ill. Adm. Code 50
- 3) Section Number: 50.60 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing and authorized by Section 1-17 of the Department of Human Services Act [20 ILCS 1305]
- 5) Effective Date of Rule: November 6, 2015
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule, including any material incorporated, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 9697; July 17, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: No substantive changes were made to the text of the proposed rulemaking.
- 12) Have all changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were needed.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
50.10	Amendment	39 Ill. Reg. 13192; October 2, 2015
- 15) Summary and Purpose of Rulemaking: In accordance with provisions of Section 1-17 of the Department of Human Services Act [20 ILCS 1305], this rulemaking corrects an error

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in Section 50.60(a)(6), which states that a complainant can request a clarification or reconsideration. Pursuant to the statute, this rulemaking deletes the complainant as someone who has standing to request a reconsideration.

The Office of Inspector General recently became aware of the error, which is inconsistent with its statute. 20 ILCS 1305/1-17(n)(2) states: "The facility, agency, victim or guardian, or the subject employee may request that the Office of Inspector General reconsider or clarify its finding based on additional information." This rulemaking adds this language to the administrative rules at 59 Ill. Adm. Code 50.60(a)(7).

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

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

217/785-9772

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 59: MENTAL HEALTH
CHAPTER I: DEPARTMENT OF HUMAN SERVICESPART 50
OFFICE OF INSPECTOR GENERAL
INVESTIGATIONS OF ALLEGED ABUSE OR NEGLECT IN
STATE-OPERATED FACILITIES AND COMMUNITY AGENCIES

Section

50.10	Definitions
50.20	Reporting an Allegation of Abuse, Neglect, or Financial Exploitation and Death Reports
50.30	Responsibilities of OIG for Intake Assessment
50.40	Method of Investigation
50.50	Conducting Investigations
50.60	Processing Investigative Reports, Reconsideration and Clarification Request Requirements, and the Contents of Case Files
50.70	Completed Investigations
50.80	Written Responses
50.90	Reporting by the Inspector General to the Illinois Department of Public Health Health Care Worker Registry
50.100	Removal of an Employee's Name and Finding from the Illinois Department of Public Health Health Care Worker Registry

AUTHORITY: Implementing and authorized by Section 1-17 of the Department of Human Services Act [20 ILCS 1305].

SOURCE: Adopted at 22 Ill. Reg. 19334, effective October 19, 1998; emergency amendment at 23 Ill. Reg. 4513, effective April 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10812, effective August 23, 1999; emergency amendment at 26 Ill. Reg. 484, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 8352, effective May 24, 2002; amended at 32 Ill. Reg. 8132, effective May 16, 2008; emergency amendment at 33 Ill. Reg. 13489, effective September 10, 2009, for a maximum of 150 days; emergency expired February 6, 2010; amended at 34 Ill. Reg. 5239, effective March 25, 2010; emergency amendment at 38 Ill. Reg. 18242, effective August 13, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 19152, effective September 10, 2014; amended at 38 Ill. Reg. 22642, effective November 20, 2014; emergency amendment at 39 Ill. Reg. 13271, effective September 18, 2015, for a maximum of 150 days; amended at 39 Ill. Reg. 15134, effective November 6, 2015.

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Section 50.60 Processing Investigative Reports, Reconsideration and Clarification Request Requirements, and the Contents of Case Files

- a) Processing investigative reports
 - 1) The investigative report shall be submitted to the Inspector General within 60 days from assignment unless there are extenuating circumstances including, but not limited to, the unavailability of witnesses or official documents.
 - 2) Upon receipt of an investigative report, the Inspector General will determine whether to accept the findings. The Inspector General may require additional documentation or further investigation by the community agency or may determine that further investigation by OIG is warranted.
 - 3) When the Inspector General determines that abuse, neglect or financial exploitation of an individual is substantiated against an employee, the Inspector General shall note in the investigative report any aggravating or mitigating circumstances as those terms are defined in this Part.
 - 4) When the Inspector General substantiates neglect against an employee, the Inspector General shall make a determination in the investigative report if the neglect is egregious.
 - 5) Finalizing investigative reports and notifications to community agencies and facilities
 - A) Cases investigated by OIG. After determining the finding, for substantiated cases or unsubstantiated and unfounded cases with recommendations, the Inspector General shall notify the community agency or facility by submitting to it a copy of the investigative report. For unsubstantiated and unfounded cases without recommendations, a letter of finding will be sent to the facility or agency.
 - B) Cases investigated by community agencies. After determining the finding, the Inspector General shall notify the community agency that the finding was accepted, or if additional information is

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required to complete the investigation.

- C) The community agency or facility shall submit a written response as described in Section 50.80.
- 6) After determining the finding in all cases, in addition to the facility or agency, the Inspector General shall also notify the following parties:
- A) the complainant;
 - B) the individual who was allegedly abused, neglected or financially exploited or his or her legal guardian (if applicable);⁵ and
 - C) the person alleged to have committed the offense.
- 7) The notice provided to the following parties shall identify the outcome of the investigation and include a statement of the right to request clarification or reconsideration of the finding⁵:
- A) the individual who was allegedly abused, neglected or financially exploited or his or her legal guardian (if applicable);
 - B) the person alleged to have committed the offense; and
 - C) the facility or agency.
- 8) In substantiated cases, the Inspector General shall provide the perpetrator with a redacted copy of the investigative report.
- b) Reconsideration and clarification requirements: Requests that the Inspector General provide clarification of the findings or reconsideration of the findings must be submitted within 15 days after receipt of the report or notification of the findings.
- 1) All clarification and reconsideration requests must be in writing.
 - 2) Community agency or facility clarification and reconsideration requests must be on letterhead signed by the authorized representative.

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- 3) All clarification and reconsideration requests must clearly identify the nature of the request and reconsideration requests must include new information that could change the finding.
 - 4) If a reconsideration request is denied or after clarification has been provided, the community agency or facility shall submit a written response as set forth in Section 50.80.
 - 5) If the Inspector General determines further investigation is necessary based on the request for reconsideration or clarification of the findings, an amended investigative report shall be issued.
- c) Contents of case files
- 1) An investigative file submitted by a community agency after an investigation is completed shall include:
 - A) All investigatory materials, including physical and documentary evidence, such as photographs, interview statements and records;
 - B) An investigative report to the Inspector General with a recommendation as to whether the findings of the investigation indicate that the allegation should be substantiated, unsubstantiated, or unfounded;
 - C) A written response when required by Section 50.80(a).
 - 2) In addition to subsections (c)(1)(A) and (B) ~~of this Section~~, when abuse, neglect or financial exploitation is substantiated, investigative files shall include:
 - A) An assessment of the egregiousness of actions in reports that substantiated neglect.
 - B) Identification of the mitigating and aggravating circumstances, if any.
 - 3) In addition to subsections (c)(1)(A) and (B) ~~of this Section~~, when OIG has conducted the investigation, investigative files shall include: on a

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prescribed form, a written response from the community agency or facility that addresses the actions that it will take or has taken to protect individuals from abuse, neglect or financial exploitation, prevent recurrences, and eliminate problems, including implementation and completion dates for all such actions, as a result of the findings or recommendations contained in the investigation. ([See Section 50.80 of this Part](#)).

(Source: Amended at 39 Ill. Reg. 15134, effective November 6, 2015)

HUMAN RIGHTS COMMISSION

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Joint Rules of the Human Rights Commission and Department of Human Rights: Rules on Pregnancy Discrimination and Accommodation in Employment
- 2) Code Citation: 56 Ill. Adm. Code 5215
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
5215.10	New Section
5215.20	New Section
5215.100	New Section
5215.110	New Section
5215.120	New Section
5215.130	New Section
5215.140	New Section
5215.150	New Section
5215.160	New Section
5215.170	New Section
5215.200	New Section
5215.210	New Section
5215.220	New Section
5215.300	New Section
- 4) Statutory Authority: Implementing Sections 2-102(I), (J) and (K), and authorized by Sections 7-101(A) and 8-102(E) of the Illinois Human Rights Act [775 ILCS 5/7-101(A)]
- 5) Effective Date of Rules: November 4, 2015
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted 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 Proposal published in the *Illinois Register*: July 17, 2015; 39 Ill. Reg. 9911
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No

HUMAN RIGHTS COMMISSION

NOTICE OF ADOPTED RULES

- 11) Differences between Proposal and Final Version: Since this rule references the text of 56 Ill. Adm. Code 2535, see that rule for changes made. That rule is published in this issue of the *Illinois Register*.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rules: Pursuant to PA 98-1050, the rules require employers with pregnant employees/workers, including, but not limited to small businesses, to provide reasonable accommodations to those employees/workers. Further, the proposed rules prohibit employers from discriminating against pregnant employees/workers in employment and require that employers post a pregnancy discrimination notice.
- 16) Information and questions regarding these adopted rules shall be directed to:

Evelio Mora
Assistant General Counsel
Illinois Human Rights Commission
100 W. Randolph St., Ste. 5-100
Chicago IL 60601

312/814-6269

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

HUMAN RIGHTS COMMISSION

NOTICE OF ADOPTED RULES

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

PART 5215

JOINT RULES OF THE HUMAN RIGHTS COMMISSION AND DEPARTMENT OF
HUMAN RIGHTS: RULES ON PREGNANCY DISCRIMINATION AND
ACCOMMODATION IN EMPLOYMENT

AUTHORITY: Implementing Sections 2-102(I), (J) and (K), and authorized by Sections 7-101(A) and 8-102(E) of, the Illinois Human Rights Act [775 ILCS 5/2-102, 7-101 and 8-102].

SOURCE: Adopted at 39 Ill. Reg. 15141, effective November 4, 2015.

(Editor's Note: The text of this Joint Rule appears at 56 Ill. Adm. Code 2535.)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Primary Drinking Water Standards
- 2) Code Citation: 35 Ill. Adm. Code 611
- 3) Section Number: 611.125 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing Sections 9, 12, 13, 21, and 22 and authorized by Sections 27 of the Environmental Protection Act [415 ILCS 5/9, 12, 13, 21, 22, and 27]
- 5) Effective Date of Rule: November 9, 2015
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The copy of the adopted rule including any material incorporated by reference, is on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, and is available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: June 26, 2015; 39 Ill. Reg. 8691
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Section 611.858 was not reinstated and remains repealed
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citation:</u>
611.102	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.261	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.262	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.351	Amendment	39 Ill. Reg. 12078; September 4, 2015

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611.357	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.358	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.383	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.609	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.732	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.745	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.901	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.902	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.903	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.904	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.908	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.909	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.956	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.976	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.APPENDIX G	Amendment	39 Ill. Reg. 12078; September 4, 2015
611.APPENDIX H	Amendment	39 Ill. Reg. 12078; September 4, 2015

- 15) Summary and Purpose of Rulemaking: This rule updates the current fluoride standard to reflect the recent recommendation by the U.S. Department of Health and Human Services. A more complete description of this proposal may be found in the Board's opinion and order of November 5, 2015 (R15-23), which is available at <http://www.ipcb.state.il.us/COOL/external/CaseView.aspx?case=15150>.
- 16) Information and questions regarding this adopted rule shall be directed to:

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

312/814-4925
marie.tipsord@illinois.gov

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 docket number R15-23 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us/COOL/external/CaseView.aspx?case=15150).

POLLUTION CONTROL BOARD

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

POLLUTION CONTROL BOARD

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER I: POLLUTION CONTROL BOARDPART 611
PRIMARY DRINKING WATER STANDARDS

SUBPART A: GENERAL

Section	
611.100	Purpose, Scope, and Applicability
611.101	Definitions
611.102	Incorporations by Reference
611.103	Severability
611.105	Electronic Reporting
611.107	Agency Inspection of PWS Facilities
611.108	Delegation to Local Government
611.109	Enforcement
611.110	Special Exception Permits
611.111	Relief Equivalent to SDWA Section 1415(a) Variances
611.112	Relief Equivalent to SDWA Section 1416 Exemptions
611.113	Alternative Treatment Techniques
611.114	Siting Requirements
611.115	Source Water Quantity
611.120	Effective Dates
611.121	Maximum Contaminant Levels and Finished Water Quality
611.125	Fluoridation Requirement
611.126	Prohibition on Use of Lead
611.130	Special Requirements for Certain Variances and Adjusted Standards
611.131	Relief Equivalent to SDWA Section 1415(e) Small System Variance
611.160	Composite Correction Program
611.161	Case-by-Case Reduced Subpart Y Monitoring for Wholesale and Consecutive Systems

SUBPART B: FILTRATION AND DISINFECTION

Section	
611.201	Requiring a Demonstration
611.202	Procedures for Agency Determinations

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611.211	Filtration Required
611.212	Groundwater under Direct Influence of Surface Water
611.213	No Method of HPC Analysis
611.220	General Requirements
611.230	Filtration Effective Dates
611.231	Source Water Quality Conditions
611.232	Site-Specific Conditions
611.233	Treatment Technique Violations
611.240	Disinfection
611.241	Unfiltered PWSs
611.242	Filtered PWSs
611.250	Filtration
611.261	Unfiltered PWSs: Reporting and Recordkeeping
611.262	Filtered PWSs: Reporting and Recordkeeping
611.271	Protection during Repair Work
611.272	Disinfection Following Repair
611.276	Recycle Provisions

SUBPART C: USE OF NON-CENTRALIZED TREATMENT DEVICES

Section	
611.280	Point-of-Entry Devices
611.290	Use of Point-of-Use Devices or Bottled Water

SUBPART D: TREATMENT TECHNIQUES

Section	
611.295	General Requirements
611.296	Acrylamide and Epichlorohydrin
611.297	Corrosion Control

SUBPART F: MAXIMUM CONTAMINANT LEVELS (MCLs) AND
MAXIMUM RESIDUAL DISINFECTANT LEVELS (MRDLs)

Section	
611.300	Old MCLs for Inorganic Chemical Contaminants
611.301	Revised MCLs for Inorganic Chemical Contaminants
611.310	State-Only Maximum Contaminant Levels (MCLs) for Organic Chemical Contaminants

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611.311	Revised MCLs for Organic Chemical Contaminants
611.312	Maximum Contaminant Levels (MCLs) for Disinfection Byproducts (DBPs)
611.313	Maximum Residual Disinfectant Levels (MRDLs)
611.320	Turbidity (Repealed)
611.325	Microbiological Contaminants
611.330	Maximum Contaminant Levels for Radionuclides
611.331	Beta Particle and Photon Radioactivity (Repealed)

SUBPART G: LEAD AND COPPER

Section	
611.350	General Requirements
611.351	Applicability of Corrosion Control
611.352	Corrosion Control Treatment
611.353	Source Water Treatment
611.354	Lead Service Line Replacement
611.355	Public Education and Supplemental Monitoring
611.356	Tap Water Monitoring for Lead and Copper
611.357	Monitoring for Water Quality Parameters
611.358	Monitoring for Lead and Copper in Source Water
611.359	Analytical Methods
611.360	Reporting
611.361	Recordkeeping

SUBPART I: DISINFECTANT RESIDUALS, DISINFECTION BYPRODUCTS,
AND DISINFECTION BYPRODUCT PRECURSORS

Section	
611.380	General Requirements
611.381	Analytical Requirements
611.382	Monitoring Requirements
611.383	Compliance Requirements
611.384	Reporting and Recordkeeping Requirements
611.385	Treatment Technique for Control of Disinfection Byproduct (DBP) Precursors

SUBPART K: GENERAL MONITORING AND ANALYTICAL REQUIREMENTS

Section	
611.480	Alternative Analytical Techniques

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611.490	Certified Laboratories
611.491	Laboratory Testing Equipment
611.500	Consecutive PWSs
611.510	Special Monitoring for Unregulated Contaminants (Repealed)

SUBPART L: MICROBIOLOGICAL MONITORING
AND ANALYTICAL REQUIREMENTS

Section

611.521	Routine Coliform Monitoring
611.522	Repeat Coliform Monitoring
611.523	Invalidation of Total Coliform Samples
611.524	Sanitary Surveys
611.525	Fecal Coliform and E. Coli Testing
611.526	Analytical Methodology
611.527	Response to Violation
611.528	Transition from Subpart L to Subpart AA Requirements
611.531	Analytical Requirements
611.532	Unfiltered PWSs
611.533	Filtered PWSs

SUBPART M: TURBIDITY MONITORING AND ANALYTICAL REQUIREMENTS

Section

611.560	Turbidity
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SUBPART N: INORGANIC MONITORING AND ANALYTICAL REQUIREMENTS

Section

611.591	Violation of a State MCL
611.592	Frequency of State Monitoring
611.600	Applicability
611.601	Monitoring Frequency
611.602	Asbestos Monitoring Frequency
611.603	Inorganic Monitoring Frequency
611.604	Nitrate Monitoring
611.605	Nitrite Monitoring
611.606	Confirmation Samples
611.607	More Frequent Monitoring and Confirmation Sampling

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611.608	Additional Optional Monitoring
611.609	Determining Compliance
611.610	Inorganic Monitoring Times
611.611	Inorganic Analysis
611.612	Monitoring Requirements for Old Inorganic MCLs
611.630	Special Monitoring for Sodium
611.631	Special Monitoring for Inorganic Chemicals (Repealed)

SUBPART O: ORGANIC MONITORING AND ANALYTICAL REQUIREMENTS

Section	
611.640	Definitions
611.641	Old MCLs
611.645	Analytical Methods for Organic Chemical Contaminants
611.646	Phase I, Phase II, and Phase V Volatile Organic Contaminants
611.647	Sampling for Phase I Volatile Organic Contaminants (Repealed)
611.648	Phase II, Phase IIB, and Phase V Synthetic Organic Contaminants
611.650	Monitoring for 36 Contaminants (Repealed)
611.657	Analytical Methods for 36 Contaminants (Repealed)
611.658	Special Monitoring for Organic Chemicals (Repealed)

SUBPART P: THM MONITORING AND ANALYTICAL REQUIREMENTS

Section	
611.680	Sampling, Analytical, and other Requirements (Repealed)
611.683	Reduced Monitoring Frequency (Repealed)
611.684	Averaging (Repealed)
611.685	Analytical Methods (Repealed)
611.686	Modification to System (Repealed)
611.687	Sampling for THM Potential (Repealed)
611.688	Applicability Dates (Repealed)

SUBPART Q: RADIOLOGICAL MONITORING AND ANALYTICAL REQUIREMENTS

Section	
611.720	Analytical Methods
611.731	Gross Alpha
611.732	Beta Particle and Photon Radioactivity
611.733	General Monitoring and Compliance Requirements

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SUBPART R: ENHANCED FILTRATION AND DISINFECTION:
SYSTEMS THAT SERVE 10,000 OR MORE PEOPLE

Section	
611.740	General Requirements
611.741	Standards for Avoiding Filtration
611.742	Disinfection Profiling and Benchmarking
611.743	Filtration
611.744	Filtration Sampling Requirements
611.745	Reporting and Recordkeeping Requirements

SUBPART S: GROUNDWATER RULE

Section	
611.800	General Requirements and Applicability
611.801	Sanitary Surveys for GWS Suppliers
611.802	Groundwater Source Microbial Monitoring and Analytical Methods
611.803	Treatment Technique Requirements for GWS Suppliers
611.804	Treatment Technique Violations for GWS Suppliers
611.805	Reporting and Recordkeeping for GWS Suppliers

SUBPART T: REPORTING AND RECORDKEEPING

Section	
611.830	Applicability
611.831	Monthly Operating Report
611.832	Notice by Agency (Repealed)
611.833	Cross Connection Reporting
611.840	Reporting
611.851	Reporting MCL, MRDL, and other Violations (Repealed)
611.852	Reporting other Violations (Repealed)
611.853	Notice to New Billing Units (Repealed)
611.854	General Content of Public Notice (Repealed)
611.855	Mandatory Health Effects Language (Repealed)
611.856	Fluoride Notice (Repealed)
611.858	Fluoride Secondary Standard (Repealed)
611.860	Record Maintenance
611.870	List of 36 Contaminants (Repealed)

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SUBPART U: CONSUMER CONFIDENCE REPORTS

Section	
611.881	Purpose and Applicability
611.882	Compliance Dates
611.883	Content of the Reports
611.884	Required Additional Health Information
611.885	Report Delivery and Recordkeeping

SUBPART V: PUBLIC NOTIFICATION OF DRINKING WATER VIOLATIONS

Section	
611.901	General Public Notification Requirements
611.902	Tier 1 Public Notice: Form, Manner, and Frequency of Notice
611.903	Tier 2 Public Notice: Form, Manner, and Frequency of Notice
611.904	Tier 3 Public Notice: Form, Manner, and Frequency of Notice
611.905	Content of the Public Notice
611.906	Notice to New Billing Units or New Customers
611.907	Special Notice of the Availability of Unregulated Contaminant Monitoring Results
611.908	Special Notice for Exceedence of the Fluoride Secondary Standard
611.909	Special Notice for Nitrate Exceedences above the MCL by a Non-Community Water System
611.910	Notice by the Agency on Behalf of a PWS
611.911	Special Notice for Cryptosporidium

SUBPART W: INITIAL DISTRIBUTION SYSTEM EVALUATIONS

Section	
611.920	General Requirements
611.921	Standard Monitoring
611.922	System-Specific Studies
611.923	40/30 Certification
611.924	Very Small System Waivers
611.925	Subpart Y Compliance Monitoring Location Recommendations

SUBPART X: ENHANCED FILTRATION AND DISINFECTION –
SYSTEMS SERVING FEWER THAN 10,000 PEOPLE

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Section

611.950	General Requirements
611.951	Finished Water Reservoirs
611.952	Additional Watershed Control Requirements for Unfiltered Systems
611.953	Disinfection Profile
611.954	Disinfection Benchmark
611.955	Combined Filter Effluent Turbidity Limits
611.956	Individual Filter Turbidity Requirements
611.957	Reporting and Recordkeeping Requirements

SUBPART Y: STAGE 2 DISINFECTION BYPRODUCTS REQUIREMENTS

Section

611.970	General Requirements
611.971	Routine Monitoring
611.972	Subpart Y Monitoring Plan
611.973	Reduced Monitoring
611.974	Additional Requirements for Consecutive Systems
611.975	Conditions Requiring Increased Monitoring
611.976	Operational Evaluation Levels
611.977	Requirements for Remaining on Reduced TTHM and HAA5 Monitoring Based on Subpart I Results
611.978	Requirements for Remaining on Increased TTHM and HAA5 Monitoring Based on Subpart I Results
611.979	Reporting and Recordkeeping Requirements

SUBPART Z: ENHANCED TREATMENT FOR CRYPTOSPORIDIUM

Section

611.1000	General Requirements
611.1001	Source Water Monitoring Requirements: Source Water Monitoring
611.1002	Source Water Monitoring Requirements: Sampling Schedules
611.1003	Source Water Monitoring Requirements: Sampling Locations
611.1004	Source Water Monitoring Requirements: Analytical Methods
611.1005	Source Water Monitoring Requirements: Approved Laboratories
611.1006	Source Water Monitoring Requirements: Reporting Source Water Monitoring Results

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- 611.1007 Source Water Monitoring Requirements: Grandfathering Previously Collected Data
- 611.1008 Disinfection Profiling and Benchmarking Requirements: Requirements When Making a Significant Change in Disinfection Practice
- 611.1009 Disinfection Profiling and Benchmarking Requirements: Developing the Disinfection Profile and Benchmark
- 611.1010 Treatment Technique Requirements: Bin Classification for Filtered Systems
- 611.1011 Treatment Technique Requirements: Filtered System Additional Cryptosporidium Treatment Requirements
- 611.1012 Treatment Technique Requirements: Unfiltered System Cryptosporidium Treatment Requirements
- 611.1013 Treatment Technique Requirements: Schedule for Compliance with Cryptosporidium Treatment Requirements
- 611.1014 Treatment Technique Requirements: Requirements for Uncovered Finished Water Storage Facilities
- 611.1015 Requirements for Microbial Toolbox Components: Microbial Toolbox Options for Meeting Cryptosporidium Treatment Requirements
- 611.1016 Requirements for Microbial Toolbox Components: Source Toolbox Components
- 611.1017 Requirements for Microbial Toolbox Components: Pre-Filtration Treatment Toolbox Components
- 611.1018 Requirements for Microbial Toolbox Components: Treatment Performance Toolbox Components
- 611.1019 Requirements for Microbial Toolbox Components: Additional Filtration Toolbox Components
- 611.1020 Requirements for Microbial Toolbox Components: Inactivation Toolbox Components
- 611.1021 Reporting and Recordkeeping Requirements: Reporting Requirements
- 611.1022 Reporting and Recordkeeping Requirements: Recordkeeping Requirements
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SUBPART AA: REVISED TOTAL COLIFORM RULE

Section

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611.1055	Routine Monitoring Requirements for CWSs That Serve 1,000 or Fewer People Using Only Groundwater
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AUTHORITY: Implementing Sections 7.2, 17, and 17.5 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 17, 17.5, and 27].

SOURCE: Adopted in R88-26 at 14 Ill. Reg. 16517, effective September 20, 1990; amended in R90-21 at 14 Ill. Reg. 20448, effective December 11, 1990; amended in R90-13 at 15 Ill. Reg. 1562, effective January 22, 1991; amended in R91-3 at 16 Ill. Reg. 19010, effective December 1, 1992; amended in R92-3 at 17 Ill. Reg. 7796, effective May 18, 1993; amended in R93-1 at 17 Ill. Reg. 12650, effective July 23, 1993; amended in R94-4 at 18 Ill. Reg. 12291, effective July 28, 1994; amended in R94-23 at 19 Ill. Reg. 8613, effective June 20, 1995; amended in R95-17 at 20 Ill. Reg. 14493, effective October 22, 1996; amended in R98-2 at 22 Ill. Reg. 5020, effective March 5, 1998; amended in R99-6 at 23 Ill. Reg. 2756, effective February 17, 1999; amended in R99-12 at 23 Ill. Reg. 10348, effective August 11, 1999; amended in R00-8 at 23 Ill. Reg. 14715, effective December 8, 1999; amended in R00-10 at 24 Ill. Reg. 14226, effective September 11, 2000; amended in R01-7 at 25 Ill. Reg. 1329, effective January 11, 2001; amended in R01-20 at 25 Ill. Reg. 13611, effective October 9, 2001; amended in R02-5 at 26 Ill. Reg. 3522, effective February 22, 2002; amended in R03-4 at 27 Ill. Reg. 1183, effective January 10, 2003; amended in R03-15 at 27 Ill. Reg. 16447, effective October 10, 2003; amended in R04-3 at 28 Ill. Reg. 5269, effective March 10, 2004; amended in R04-13 at 28 Ill. Reg. 12666, effective August 26, 2004; amended in R05-6 at 29 Ill. Reg. 2287, effective January 28, 2005; amended in R06-15 at 30 Ill. Reg. 17004, effective October 13, 2006; amended in R07-2/R07-11 at 31 Ill. Reg. 11757, effective July 27, 2007; amended in R08-7/R08-13 at 33 Ill. Reg. 633, effective December 30, 2008; amended in R10-1/R10-17/R11-6 at 34 Ill. Reg. 19848, effective December 7, 2010; amended in R12-4 at 36 Ill. Reg. 7110, effective April 25, 2012; amended in R13-2 at 37 Ill. Reg. 1978, effective February 4, 2013; amended in R14-8 at 38 Ill. Reg. 3608, effective January 27, 2014; amended in R14-9 at 38 Ill. Reg. 9792, effective April 21, 2014; amended in R15-6 at 39 Ill. Reg. 3713, effective February 24, 2015; amended in R15-23 at 39 Ill. Reg. 15144, effective November 9, 2015.

SUBPART A: GENERAL

Section 611.125 Fluoridation Requirement

All CWSs that are required to add fluoride to the water must maintain a fluoride ion concentration, reported as F, of ~~0.7 to 1.2~~ 0.9 to 1.2 mg/L in its distribution system, ~~as required by Section 7a of the Public Water Supply Regulation Act [415 ILCS 40/7a].~~

BOARD NOTE: This is an additional State requirement.

(Source: Amended at 39 Ill. Reg. 15144, effective November 9, 2015)

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

<u>Section Numbers:</u>	<u>Actions:</u>
50.110	Amendment
50.230	Amendment
50.430	Amendment
- 4) Notice of Emergency Amendments published in the *Illinois Register*: July 17, 2015; 39 Ill. Reg. 10072
- 5) JCAR Statement of Objection to Emergency published in the *Illinois Register*: August 28, 2015; 39 Ill. Reg. 12031
- 6) Date Agency submitted this modification to JCAR for approval: November 9, 2015
- 7) Summary of Action Taken by the Agency: At its meeting on August 11, 2015, the Joint Committee on Administrative Rules ("JCAR") objected to the Department of Human Services' use of emergency rulemaking to adopt rules titled Child Care (89 Ill. Adm. Code 50; 39 Ill. Reg. 10072 – July 17, 2015). The Department of Human Services (the "Department" or "DHS") has reviewed the objection from the Joint Committee on Administrative Rules regarding the above-referenced emergency rulemaking. The Department respectfully disagrees that it did not demonstrate the existence of a situation that warrants the use of emergency rulemaking. Nevertheless, DHS recognizes some of the concerns raised regarding the emergency rule and therefore elects to amend certain portions of the rule. The amendments are as follows:
 1. Section 50.230(c)(6) is being amended to raise the eligibility threshold to 162% of the Federal Poverty Level ("FPL").

After analyzing the program's expenditures during the first four months of FY 2016, DHS believes it can responsibly raise the eligibility threshold to 162% of FPL. However, raising the FPL to 162% still requires that the General Assembly pass a balanced budget with sufficient appropriations to fund the program throughout the remainder of the fiscal year.

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2. Section 50.110(g) that requires program applicants to open an active child support collection case is being deleted.

In response to the comments and feedback regarding concerns related to women who are victims of domestic abuse, DHS intends to reintroduce this rule change at a later date with language that makes it explicitly clear that the rule contains a comprehensive good cause exception necessary to protect the health and safety of domestic violence victims (similar to what exists in other benefit programs). Accordingly, DHS deletes this portion of the emergency rule change.

3. Section 50.430(c) that requires non-relatives to submit to a fingerprint-based criminal history record check as a condition of eligibility is being deleted.

This portion of the rule is currently the subject of labor negotiations and, therefore, DHS is deleting Section 50.430(c) pending the result of those negotiations.

The full text of the Sections of the Emergency Amendments being modified begins on the next page:

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

PART 50
CHILD CARE

SUBPART A: GENERAL PROVISIONS

- Section
- 50.101 Incorporation by Reference
 - 50.105 Definitions
 - 50.110 Participant Rights and Responsibilities
 - EMERGENCY
 - 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 (Repealed)
 - 50.250 Additional Service to Secure or Maintain Child Care
 - 50.260 Job Search (Repealed)

SUBPART C: PAYMENT FEES

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

SUBPART D: PROVIDER REQUIREMENTS

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Section

- 50.400 Purpose
- 50.410 Qualified Provider
- 50.420 Provider Registration and Certification Requirements

EMERGENCY

- 50.430 Provider Background Checks

EMERGENCY

- 50.440 Payment for Child Care Services

SUBPART E: GREAT START PROGRAM

Section

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

SUBPART F: CHILD CARE COLLABORATION PROGRAM

Section

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

SUBPART G: GATEWAYS TO OPPORTUNITY CREDENTIALS

Section

- 50.710 Gateways to Opportunity, the Illinois Professional Development System
- 50.720 Gateways to Opportunity Credentials
- 50.730 Application for Credentials
- 50.740 Framework for Gateways to Opportunity Credentials

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- 50.750 Professional Knowledge
50.760 Gateways to Opportunity Registry

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

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

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emergency expired August 28, 2011; amended at 35 Ill. Reg. 8878, effective May 25, 2011; amended at 36 Ill. Reg. 1564, effective January 17, 2012; amended at 36 Ill. Reg. 12104, effective July 10, 2012; amended at 36 Ill. Reg. 14513, effective September 12, 2012; amended at 36 Ill. Reg. 16085, effective October 29, 2012; amended at 38 Ill. Reg. 18490, effective August 22, 2014; amended at 38 Ill. Reg. 19513, effective September 17, 2014; emergency amendment at 39 Ill. Reg. 10072, effective July 1, 2015, for a maximum of 150 days; emergency rule modified in response to JCAR objection at 39 Ill. Reg. 15158, effective November 9, 2015, for the remainder of the 150 days.

SUBPART A: GENERAL PROVISIONS

Section 50.110 Participant Rights and Responsibilities**EMERGENCY**

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

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- e) Parents are responsible for reporting to the Department or its agents additional income, loss of employment, or departure from an approved education or training activity that would affect eligibility for child care services. The Department or its agents may schedule a redetermination at any time upon receiving information that could affect eligibility for child care services.
- f) Parents must avail themselves of all other available child care services including child care appropriate and available from the Department of Children and Family Services (DCFS) offered to particular categories of caregivers, such as foster parents who are employed and need child care to be foster parents.
- g) ~~Within six months of initial child care assistance eligibility, an eligible family with an absent parent must open an active collection case with the Division of Child Support Services at the Department of Healthcare and Family Services. A case must be opened against the absent parent of every child within the family's household.~~

(Source: Emergency rule modified in response to JCAR objection at 39 Ill. Reg. 15158, effective November 9, 2015, for the remainder of the 150 days)

SUBPART B: APPLICABILITY

Section 50.230 Child Care Eligibility**EMERGENCY**

- a) To the extent resources permit, it is the intent of the Department to provide child care services to all applicants that meet the eligibility requirements set forth in this Section. If it is necessary to limit participation to stay within the amounts appropriated or resources available to the Department for child care services, applicants will be limited to the priority service groups specified in subsection (c)(6) and shall remain until such time as sufficient resources are available to serve all eligible applicants.
- b) Child care services are restricted to children under age 13 and to children under age 19 who are under court supervision or have physical or mental incapacities as documented by a statement from a local health provider or other health professional.

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- c) Parents and other relatives eligible to receive child care services include:
 - 1) Recipients of Temporary Assistance for Needy Families (TANF) under Article IV of the Public Aid Code participating in work and/or training-related activities as specified in their RSP (see 89 Ill. Adm. Code 112.74) as approved by the Department's TANF case worker.
 - 2) Working families, including teen parents enrolled full-time in elementary or high school or GED classes 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 Base Income*
2	\$2,456
3	\$3,098
4	\$3,739
5	\$4,380
6	\$5,022
7	\$5,663
8	\$6,304
9	\$6,946
10	\$7,587

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

- 3) Families who do not receive TANF and need child care services in order to attend school or training (up to and including the acquisition of the first Associate Degree and/or the first Bachelor's Degree) whose monthly income does not exceed the monthly income ceilings in subsection (c)(2). 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

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

A) Below Post-Secondary Education Eligibility and Participation Requirements

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

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

- B) Vocational Education Eligibility and Participation Requirements
Programs in this category of education may be offered by a public community college, public or private university, or private business/technical school. The program usually results in the receipt of a Certificate of Achievement or Completion and/or prepares the client for a specific job or to obtain a license required by some occupations. There is no work requirement for the first 24 non-consecutive months the client participates. From the 25th month on, the client must work at least 20 hours per week. Individuals enrolled in vocational education must maintain a "C" average if this measurement is used by the institution to determine satisfactory progress. The individual will be allowed one semester below a "C" average to bring the grades up to a "C" average. When grades are not used, progress will be determined by the written policy of the institution to establish a comparable grade level upon completion of the academic term. The determination of satisfactory progress must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months.
- C) Post-Secondary Education
- i) This category of education includes all undergraduate college level courses that could result in an Associate 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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- be enrolled in a program accredited under requirements of State law as stated in subsection (c)(3).
 - not already have an Associate or Bachelor's Degree, if requesting child care to earn an Associate Degree. Child care will not be approved for attainment of a second Associate Degree.
 - not already have a Bachelor's Degree, if requesting child care to earn a Bachelor's Degree. Child care will not be approved for attainment of a second Bachelor's Degree.
 - not be in an advanced degree program (beyond a Bachelor's Degree). Child care will not be approved for education beyond the attainment of a Bachelor's Degree.
- ii) There is no work requirement for the first 48 non-consecutive months the client participates. From the 49th month on, the client must work at least 20 hours per week. Clients who do not work and who need child care to attend college must maintain a 2.5 grade point average (GPA) (on a 4.0 scale) if this measurement is used by the institution to determine satisfactory progress. Clients who work 20 hours or more per week in paid employment while they attend college must maintain a 2.0 GPA (on a 4.0 scale). In the absence of a GPA, satisfactory progress will be determined by the written policy of the institution. The determination of satisfactory progress, including test/retest results or GPA, must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months. If the client's GPA falls below 2.5 or 2.0 for those students who work or at any time the client does not maintain satisfactory progress, the client may continue to go to school for another semester. If the GPA is below 2.5

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or 2.0 two semesters in a row, the client will be ineligible for child care until his or her GPA is at or above 2.5 or 2.0.

- D) For child care services received under education/training, a parent enrolled in web-based courses or correspondence learning from an accredited university or college is only eligible for child care assistance if both of the following are met:
- i) The class is offered only at a regularly scheduled time (i.e., 11:00 a.m. every Monday and Wednesday) or the parent must leave the home to have access to a computer.
 - ii) The child or children for whom care is requested must be under the age of six, except during the summer or school breaks. Care shall not be authorized during the hours the child is in school or is home schooled, or if the child is in a two-parent family when the other parent is available to care for the child.
- E) Study Time
Child care services may be granted for up to one hour of study time per week for each classroom hour or 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 granted to add an extra day of care must be approved first by the Department's Bureau of Child Care and Development Policy Unit.
- 4) Relatives (other than parents) who receive child-only TANF benefits as a Representative Payee for children in need of care while they work.
 - 5) Families with active CCAP cases in which all parents in the household are called into active military duty and the relative caregivers are employed or in an approved education/training activity.
 - 6) In the event the Department must limit participation due to insufficient appropriations or available resources, applicants included in the priority service groups are:

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- A) Recipients of Temporary Assistance for Needy Families as described in subsection (c)(1);
 - B) Teen parents enrolled full-time in elementary, high school or GED classes to obtain a high school degree or its equivalent;
 - C) Families with Special Needs children;
 - D) Working families whose monthly incomes do not exceed ~~162~~50% of the most current Federal Poverty Level for their family size.
- d) All families must be residents of Illinois.
- e) Payment for child care services to eligible parents may begin:
- 1) if care was provided at the time and all eligibility factors are met, on either:
 - A) the date of the parent's signature; or
 - B) one week (seven calendar days) prior to the stamped date of receipt by the Department or its agents, whichever is later; or
 - 2) on the date the child care provider actually begins providing child care services, if the application is received in advance of services being provided and all eligibility factors are met.
- f) Eligibility ceases 10 calendar days from the date of the termination notice sent to the parent by the Department or its agents following a determination of ineligibility. Care will be terminated immediately if it is determined the child is no longer enrolled with the approved provider.

(Source: Emergency rule modified in response to JCAR objection at 39 Ill. Reg. 15158, effective November 9, 2015, for the remainder of the 150 days)

SUBPART D: PROVIDER REQUIREMENTS

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OBJECTION OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES**Section 50.430 Provider Background Checks****EMERGENCY**

- a) **Child Abuse/Neglect**
As a condition of eligibility to receive a State subsidy for providing child care services to eligible families, all license exempt child care providers under the Child Care Act of 1969 [225 ILCS 10] must agree, in writing, to a Child Abuse and Neglect Tracking System (CANTS) check in the Central Register as defined in the Abused and Neglected Child Reporting Act [325 ILCS 5].
 - 1) Providers subject to the CANTS check include:
 - A) Child care centers exempt from licensing (89 Ill. Adm. Code 377);
 - B) Child care homes exempt from licensing (89 Ill. Adm. Code 377);
 - C) Relative child care in the home of the relative (see Section 50.410);
 - D) Non-relative child care in the home of the child (see Section 50.410); and
 - E) Relative child care in the home of the child (see Section 50.410).
 - 2) All staff at a child care center exempt from licensing and all persons age 13 and older residing in a child care home exempt from licensure are subject to CANTS check.
 - 3) **Limitations on Perpetrators of Child Abuse/Neglect**
Persons who have been indicated as the perpetrator of any of the child abuse/neglect allegations identified in 89 Ill. Adm. Code 385.50 shall be disqualified from participating in the child care assistance program.
- b) **Sex Offender Registry**
All persons subject to CANTS checks pursuant to this Part shall be screened for inclusion in the Illinois and National Sex Offender Registries [730 ILCS 150].
- c) **Criminal History**

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- 1) As a condition of eligibility to receive a State subsidy for providing child care services to eligible families, all license exempt child care providers, except a provider who is related to the child, shall complete and sign authorizations for a State and Federal Bureau of Investigation (FBI) fingerprint-based criminal history record check and submit to fingerprinting, if required, to determine if the child care provider has prior criminal convictions or pending criminal charges. Provider types~~Providers~~ subject to a fingerprint-based criminal history record check include:
 - A) Child care centers exempt from licensing (89 Ill. Adm. Code 377);
 - B) Child care homes exempt from licensing (89 Ill. Adm. Code 377);
and
 - C) ~~Relative child care in the home of the relative (see Section 50.410);~~
 - D) Non-relatives who provide care~~Non-relative child care~~ in the child's home~~home of the child~~ (see Section 50.410); ~~and~~
 - E) ~~Relative child care in the home of the child (see Section 50.410).~~
- 2) Persons subject to a background check include:
 - A) an employee of a license exempt child care center whose duties require the employee to be present during the hours children are present in the facility. In addition, any person who is permitted to be alone with children receiving care in the facility is subject to the background check requirement. This applies to all current and conditional employees as well as any individual used as replacement or supplemental staff in the direct care and supervision of children.
 - B) All persons age 18 and over who reside in a child care home exempt from licensing even if those household members are not usually present in the home during the hours the children are present. This shall also apply to a person age 13 and over who has

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been tried as an adult and convicted of any crime identified in 89 Ill. Adm. Code 385.

- 3) Fingerprints shall be submitted to the Illinois State Police via the fingerprint vendor stipulated by Department of Children and Family Services (DCFS) for criminal history checks.
- 4) Fingerprints for the following persons shall be submitted to the FBI for a search of its records:
 - A) persons who have resided outside the State of Illinois for any part of the preceding three years; and
 - B) persons who have a record of criminal activity that may impact their suitability for employment as evidenced either by their own acknowledgment or according to the records of the Illinois State Police.
- 5) Persons subject to criminal background checks shall make themselves available for fingerprinting when scheduled by DCFS or its authorized representatives. Persons subject to criminal background checks who fail to appear for scheduled fingerprinting will be disqualified as a child care provider.
- 6) Persons who have been convicted of certain serious crimes identified in 89 Ill. Adm. Code 385. Appendix A (Background Checks) will be disqualified as a child care provider.
- 7) A copy of the criminal history record check shall be provided to the subject of the criminal history record.
- 8) Any information concerning convictions is confidential and may not be transmitted outside DCFS or to anyone within DCFS, except as needed for the purposes of determining participation in the child care assistance program.
- 9) There is no charge to any person subject to background checks required by this Part.

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- 10) Any person who fails to provide written authorization for a background check pursuant to this Part shall be disqualified from participating in the child care assistance program.
- d) **Convictions that Disqualify Persons for Employment or Residence in a Child Care Facility that Allows Access to Children**
A person who has been convicted of certain serious crimes identified in 89 Ill. Adm. Code 385.Appendix A or who has been convicted of committing or attempting to commit any of the offenses identified in this subsection (d) shall be disqualified from participation in the child care assistance program. In addition, no person who has been convicted of certain serious crimes identified in 89 Ill. Adm. Code 385.Appendix A or who has been convicted of committing or attempting to commit any of the offenses listed in this subsection (d) shall either be employed in a license exempt child care facility in a position that allows access to children or reside in a family home in which a licensed-exempt child care facility operates. This includes persons who have been:
 - 1) declared sexually dangerous persons under the Sexually Dangerous Persons Act [725 ILCS 205] or identified as sex offenders in the Illinois Sex Offender Registry [730 ILCS 150] operated by the Illinois State Police; or
 - 2) convicted of committing or attempting to commit any of the offenses specified in 89 Ill. Adm. Code 385.Appendix A that are defined by the Criminal Code of 1961 [720 ILCS 5] or any earlier Illinois criminal law or code (see Section 4.2 of the Child Care Act of 1969 [225 ILCS 10/4.2]); or
 - 3) convicted of committing or attempting to commit an offense in another state, the elements of which are similar and bear a substantial relationship to any of the criminal offenses specified in 89 Ill. Adm. Code 385.Appendix A.
- e) **Assessment of Indicated Reports of Abuse or Neglect and Criminal Convictions**
A person who is disqualified from participating in the child care assistance program as a license exempt child care provider who has an indicated report of abuse or neglect or who has been convicted of certain serious crimes identified in 89 Ill. Adm. Code 385.Appendix A may only receive payment through the child

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care assistance program if the individual obtains a license from DCFS in which a review and assessment of the allegations and criminal charges will be made pursuant to 89 Ill. Adm. Code 385.

- f) **Pending Criminal Charges**
A person who has criminal charges pending will not be disqualified from participating in the child care assistance program as a license exempt child care provider.

(Source: Emergency rule modified in response to JCAR objection at 39 Ill. Reg. 15158, effective November 9, 2015, for the remainder of the 150 days)

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AGENCY RESPONSE TO JOINT COMMITTEE OBJECTION
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Agency: Department of Human Services

Heading of the Part: Child Care

Code Citation: 89 Ill. Adm. Code 50

Section Numbers: 50.110 50.230 50.320 50.420 50.430

Register Citation: 39 Ill. Reg. 10072
7/17/15

Agency Response to Specific Joint Committee Objection to Proposed Rulemaking

At its meeting on August 11, 2015, the Joint Committee on Administrative Rules ("JCAR") objected to the Department of Human Services' use of emergency rulemaking to adopt rules titled Child Care (89 Ill. Adm. Code 50; 39 Ill. Reg. 10072 – 7/17/15). The basis for JCAR's objection was that the Department had not demonstrated the existence of any situation that warranted the use of emergency rulemaking. JCAR's objection reasoned that, because DHS has not yet received its Fiscal Year ("FY") 2016 appropriation for the Child Care Assistance Program ("CCAP"), it cannot, at this time, know that those future appropriations will be inadequate to serve all those who were eligible prior to the adoption of this emergency rule or the extent of any such inadequacy.

The Department of Human Services (the "Department" or "DHS") has reviewed the objection from the Joint Committee on Administrative Rules regarding the above-referenced emergency rulemaking. The Department respectfully disagrees that it did not demonstrate the existence of a situation that warrants the use of emergency rulemaking. Nevertheless, DHS recognizes some of the concerns raised regarding the emergency rule and therefore elects to amend certain portions of the rule.

I. DHS Properly Used Emergency Rules Under the Current Circumstances

For the reasons explained below, DHS properly exercised its emergency rulemaking authority under the Illinois Public Aid Code and the Illinois Administrative Code.

A. *The Plain Language of the CCAP Statute Allowed the Emergency Changes*

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The CCAP statute itself contemplates the use of emergency rules in the face of budgetary concerns. Here, during the midst of a fiscal crisis, the changes made through emergency rule were necessary to sustain the viability of CCAP for its most vulnerable participants. The Illinois Public Aid Code expressly authorizes DHS to make modifications to CCAP, through emergency rule, to ensure that benefits paid do not exceed the amounts appropriated.

The Illinois Department is authorized to lower income eligibility ceilings, raise parent co-payments, create waiting lists, or take such other actions during a fiscal year as are necessary to ensure that child care benefits paid under this Article do not exceed the amounts appropriated for those child care benefits. These changes may be accomplished by emergency rule under Section 5-45 of the Illinois Administrative Procedure Act.

305 ILCS 5/9A-11(b). The plain language of this statute grants DHS the authority to take actions through emergency rule to ensure that child care benefits do not exceed appropriations. (See *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997); *DeLuna v. Burciaga*, 857 N.E.2d 229 (2006)). Without an established yearly appropriation for CCAP in FY 2016, DHS followed the statute's directive and proposed emergency rules at a time when spending in CCAP (without a rule change) far exceeded projected revenues.

It is notable that the last two governors used emergency rulemaking to modify the child care program eight times—including rules to increase co-pays and restrict intake. The emergency rulemaking authority granted in the CCAP statute has been widely recognized as an important tool used by the executive branch to responsibly manage the program.

B. *DHS Followed the Requirements of the Illinois Administrative Procedure Act*

Pursuant to the Illinois Administrative Procedure Act, an emergency means the existence of any situation that an agency finds reasonably constitutes a threat to the public interest, safety or welfare. See 5 ILCS 100/5-45(a). The requirements for an emergency rulemaking are further enumerated in 1 Ill. Adm. Code 230.400. The four criteria for a review of an emergency rulemaking are: (1) Emergency, (2) Substantive, (3) Propriety, and (4) Procedural. As explained below, each of the four criteria have been met here.¹

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TO EMERGENCY RULEMAKING1 Ill. Adm. Code 230.400(a)(1)

This rulemaking meets the emergency elements for emergency rulemaking noted in 1 Ill. Adm. Code 230.400(a)(1). On July 1, 2015, the State of Illinois did not have an established FY 2016 budget (and is still without a budget). The budget proposed by the General Assembly, however, had appropriations exceeding overall State resources by approximately \$4 billion. Faced with such significant funding shortfalls for FY 2016, the Department reduced CCAP benefits to ensure the program's continued long term viability.

Without the changes implemented through emergency rule, there may not have been enough funds to finance the program through the remainder of FY 2016. The possibility of bankrupting CCAP constituted a threat to the public interest and welfare that this emergency rulemaking directly addressed. By taking such management steps, DHS ensured that CCAP remains a resource that the State's most vulnerable residents can rely upon.

Recognizing the impact that the emergency rules would have on CCAP and its recipients, DHS took the necessary steps to notify all potentially affected parties. The Department sent a notice, available in both English and Spanish, to every client and provider (approximately 135,000 individuals) informing them of the rule changes.

1 Ill. Adm. Code 230.400(a)(2)

This rulemaking meets the substantive elements for emergency rulemaking noted in 1 Ill. Adm. Code 230.400(a)(2). As noted above, the emergency rule comports with the express grant of statutory authority for CCAP in 305 ILCS 5/9A-11 and clearly delineates any standards for discretionary authority.

1 Ill. Adm. Code 230.400(a)(3)

This rulemaking meets the propriety elements for emergency rulemaking noted in 1 Ill. Adm. Code 230.400(a)(3). The Department has provided ample justification and rationale for the emergency rules. The justification for the rule changes has been provided to the public in: (i) an issued fact sheet, (ii) notices sent to providers/clients, and (iii) the open rulemaking forum.

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Moreover, the Department has analyzed the economic effects if its rule changes—most notably the potential bankrupting of the overall program—and has taken steps to minimize the impact of the changes and ensure that the most vulnerable are still served. For example, existing enrollees in CCAP are subject to the provisions in place at the end of FY 2015, thereby allowing those already in the program to continue receiving services. Any financial impact on providers is for potential, future enrollees. While the new intake restrictions have resulted in a higher percentage of cases/families lacking eligibility for child care, specific percentages are not yet available as applications are still being reviewed and processed. While providers will likely experience longer vacancy patterns under the new guidelines, the CCAP emergency rules primary goal was to ensure that the neediest and most vulnerable families of the State still receive services.

1 Ill. Adm. Code 230.400(a)(4)

This rulemaking meets the procedural elements for emergency rulemaking noted in 1 Ill. Adm. Code 230.400(a)(4). The emergency rulemaking complies with the requirements of the Administrative Code Division, 1 Ill. Adm. Code 100 and it complies with the Department's own rules for the promulgation of rules.

II. DHS Amends Certain Portions of the Emergency Rule Changes

Although DHS properly exercised its use of the emergency rule making process, DHS elects to amend its emergency rule regarding CCAP in response to various objections. The amendments include the following:

1. *Section 50.230(c)(6) is being amended to raise the eligibility threshold to 162% of the Federal Poverty Level ("FPL").*

After analyzing the program's expenditures during the first four months of FY 2016, DHS believes it can responsibly raise the eligibility threshold to 162% of FPL. However, raising the FPL to 162% still requires that the General Assembly pass a balanced budget with sufficient appropriations to fund the program throughout the remainder of the fiscal year.

2. Section 50.110(g) that requires program applicants to open an active child support collection case is being deleted.

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In response to the comments and feedback regarding concerns related to women who are victims of domestic abuse, DHS intends to reintroduce this rule change at a later date with language that makes it explicitly clear that the rule contains a comprehensive good cause exception necessary to protect the health and safety of domestic violence victims (similar to what exists in other benefit programs). Accordingly, DHS deletes this portion of the emergency rule change.

3. Section 50.430(c) that requires non-relatives to submit to a fingerprint-based criminal history record check as a condition of eligibility is being deleted.

This portion of the rule is also currently the subject of labor negotiations and, therefore, DHS is deleting Section 50.430(c) pending the result of those negotiations.

III. Conclusion

As described above in Section II, the Department of Human Services agrees to make three amendments to the emergency rule regarding the State's Child Care Assistance Program. The Department of Human Services respectfully declines to amend or repeal any other Section of the emergency rule.

James T. Dimas, Secretary-designate

¹Although DHS can demonstrate that the criteria enumerated in 1 Ill. Adm. Code 230.400 have been met, this analysis is superfluous given the explicit statutory grant of authority for emergency rulemaking provided in the CCAP statute, as discussed above.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of November 3, 2015 through November 9, 2015. The Department of Healthcare and Family Services rulemaking is scheduled for review at the Committee's November 17, 2015 meeting. All other rulemakings are scheduled for review at the Committee's December 15, 2015 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start of First Notice</u>	<u>JCAR Meeting</u>
12/16/15	<u>Department of Healthcare and Family Services,</u> Hospital Services (89 Ill. Adm. Code 148)	7/24/15 39 Ill. Reg. 10334	11/17/15
12/19/15	<u>Department of Revenue,</u> Income Tax (86 Ill. Adm. Code 100)	7/17/15 39 Ill. Reg. 9882	12/15/15
12/18/15	<u>Secretary of State,</u> Issuance of Licenses (92 Ill. Adm. Code 1030)	8/28/15 39 Ill. Reg. 11889	12/15/15
12/18/15	<u>Secretary of State,</u> Motor Vehicle Accident Prevention Courses For Liability Insurance Premium Reduction (50 Ill. Adm. Code 8000)	9/18/15 39 Ill. Reg. 12796	12/15/15
12/18/15	<u>Secretary of State,</u> Issuance of Licenses (92 Ill. Adm. Code 1030)	9/18/15 39 Ill. Reg. 12800	12/15/15
12/18/15	<u>State Board of Elections,</u> Administrative Complaint Procedures for Violations of Title III of HAVA (26 Ill. Adm. Code 150)	9/18/15 39 Ill. Reg. 12475	12/15/15

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

12/18/15	<u>State Board of Elections</u> , Established Political Party and Independent Candidate Nominating Petitions (26 Ill. Adm. Code 201)	9/11/15 39 Ill. Reg. 12485	12/15/15
12/18/15	<u>State Board of Elections</u> , New Political Party Nominating Petitions (26 Ill. Adm. Code 202)	9/11/15 39 Ill. Reg. 12490	12/15/15
12/23/15	<u>Department of Insurance</u> , Accident and Health Reserves (50 Ill. Adm. Code 2004)	9/18/15 39 Ill. Reg. 12715	12/15/15

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Issue Index - With Effective Dates

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