

# 2010

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# ILLINOIS

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# REGISTER

RULES  
OF GOVERNMENTAL  
AGENCIES



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## INTRODUCTION

The Illinois Register is the official State document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register. The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings. The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

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2	December 28, 2009	January 8, 2010
3	January 4, 2010	January 15, 2010
4	January 11, 2010	January 22, 2010
5	January 19, 2010	January 29, 2010
6	January 25, 2010	February 5, 2010
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51	December 6, 2010	December 17, 2010
52	December 13, 2010	December 27, 2010
53	December 20, 2010	January 3, 2011

**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, 2010 to January 3, 2011.

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Nitrogen Oxides Emissions
- 2) Code Citation: 35 Ill. Adm. Code 217
- 3) Section Number: 217.388                      Proposed Action:  
Amend
- 4) Statutory Authority: Implementing Sections 9.9 and 10, and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27, and 28]
- 5) A complete description of the subjects and issues involved: For a more detailed description of this rulemaking, see the Board's November 4, 2010, opinion and order Air Quality Standards Clean-Up: Amendments to 35 Ill. Adm. Code 217, 223, 243 (R09-19).

The Illinois Environmental Protection Agency (Agency) submitted this rulemaking proposal to update Part 243 of the Board's air regulation to reflect revised National Ambient Air Quality Standards (NAAQS) adopted by the United States Environmental Protection Agency.

The record in this proceeding reveals a error in a single cross reference in Section 217.388(a)(2)(B), and the Board submits the correction of the error for first-notice publication in this docket.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace emergency rulemakings currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of statewide policy objectives: The proposed amendments do not create or expand a State mandate as defined in Section 3 of the State Mandates Act [30 ILCS 805].
- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENT

of 45 days after the date of this publication. Comments should reference docket R09-19 and be addressed to:

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

Address questions to Tim Fox at 312-814-6085.

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

- 13) Initial regulatory flexibility analysis: The record in this proceeding reveals a error in a single cross reference in Section 217.388(a)(2)(B), and the Board submits the correction of the error for first-notice publication in this docket.
- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: As the proposal corrects and clarifies a single cross reference in a subsection addressing the compliance option of emission averaging plans for specified engines and turbines, it is not expected to affect any types of small businesses, small municipalities or not-for-profit corporations.
- B) Reporting, bookkeeping or other procedures required for compliance: As the proposal corrects and clarifies a single cross reference, it does not itself require reporting, bookkeeping or other procedures for compliance.
- C) Types of professional skills necessary for compliance: As the proposal corrects and clarifies a single cross reference, it does not require professional skills for compliance.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2009

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

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AUTHORITY: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-18 at 31 Ill. Reg. 14271, effective September 25, 2007; amended in R07-19 at 33 Ill. Reg. 11999, effective August 6, 2009; amended in R08-19 at 33 Ill. Reg. 13345, effective August 31, 2009; amended in R08-19 at 33 Ill. Reg. 15754, effective November 2, 2009; amended in R09-19 at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART Q: STATIONARY RECIPROCATING  
INTERNAL COMBUSTION ENGINES AND TURBINES

**Section 217.388 Control and Maintenance Requirements**

- a) On and after the applicable compliance date in Section 217.392, an owner or operator of an affected unit must inspect and maintain affected units as required by subsection (a)(4) of this Section and comply with one of the following: the applicable emissions concentration as set forth in subsection (a)(1) of this Section, the requirements for an emissions averaging plan as specified in subsection (a)(2) of this Section, or the requirements for operation as a low usage unit as specified in subsection (a)(3) of this Section.
- 1) Limits the discharge from an affected unit into the atmosphere of any gases that contain NO<sub>x</sub> to no more than:
- A) 150 ppmv (corrected to 15 percent O<sub>2</sub> on a dry basis) for spark-ignited rich-burn engines;

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- B) 210 ppmv (corrected to 15 percent O<sub>2</sub> on a dry basis) for spark-ignited lean-burn engines, except for existing spark-ignited Worthington engines that are not listed in Appendix G;
  - C) 365 ppmv (corrected to 15 percent O<sub>2</sub> on a dry basis) for existing spark-ignited Worthington engines that are not listed in Appendix G;
  - D) 660 ppmv (corrected to 15 percent O<sub>2</sub> on a dry basis) for diesel engines;
  - E) 42 ppmv (corrected to 15 percent O<sub>2</sub> on a dry basis) for gaseous fuel-fired turbines; and
  - F) 96 ppmv (corrected to 15 percent O<sub>2</sub> on a dry basis) for liquid fuel-fired turbines.
- 2) Complies with an emissions averaging plan as provided for in either subsection (a)(2)(A) or (a)(2)(B) of this Section:
- A) For any affected unit identified by Section 217.386: The requirements of the applicable emissions averaging plan as set forth in Section 217.390; or
  - B) For units identified in Section 217.386(a)~~(2)(A)(B)~~: The requirements of an emissions averaging plan adopted pursuant to any other Subpart of this Part. For such affected engines and turbines the applicable requirements of this Subpart apply, including, but not limited to, calculation of NO<sub>x</sub> allowable and actual emissions rates, compliance dates, monitoring, testing, reporting, and recordkeeping.
- 3) Operates, for units not listed in Appendix G, the affected unit as a low usage unit pursuant to subsection (a)(3)(A) or (a)(3)(B) of this Section. Low usage units that are not part of an emissions averaging plan are not subject to the requirements of this Subpart Q except for the requirements to inspect and maintain the unit pursuant to subsection (a)(4) of this Section, test as required by Section 217.394(f), and retain records pursuant

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to Section 217.396(b) and (d). Either the limitation in subsection (a)(3)(A) or (a)(3)(B) may be utilized at a source, but not both:

- A) The potential to emit (PTE) is no more than 100 TPY NO<sub>x</sub> aggregated from all engines and turbines located at the source that are not otherwise exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a)(1) or (a)(2) of this Section, and the NO<sub>x</sub> PTE limit is contained in a federally enforceable permit; or
  - B) The aggregate bhp-hrs/MW-hrs from all affected units located at the source that are not exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a)(1) or (a)(2) of this Section, are less than or equal to the bhp-hrs and MW-hrs operation limit listed in subsections (a)(3)(B)(i) and (a)(3)(B)(ii) of this Section. The operation limits of subsections (a)(3)(B)(i) and (a)(3)(B)(ii) of this Section must be contained in a federally enforceable permit, except for units that drive a natural gas compressor located at a natural gas compressor station or storage facility. The operation limits are:
    - i) 8 mm bhp-hrs or less on an annual basis for engines; and
    - ii) 20,000 MW-hrs or less on an annual basis for turbines.
- 4) Inspects and performs periodic maintenance on the affected unit, in accordance with a Maintenance Plan that documents:
- A) For a unit not located at natural gas transmission compressor station or storage facility, either:
    - i) The manufacturer's recommended inspection and maintenance of the applicable air pollution control equipment, monitoring device, and affected unit; or
    - ii) If the original equipment manual is not available or substantial modifications have been made that require an alternative procedure for the applicable air pollution control device, monitoring device, or affected unit, the owner or

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENT

operator must establish a plan for inspection and maintenance in accordance with what is customary for the type of air pollution control equipment, monitoring device, and affected unit.

- B) For a unit located at a natural gas compressor station or storage facility, the operator's maintenance procedures for the applicable air pollution control device, monitoring device, and affected unit.
- b) Owners and operators of affected units may change the method of compliance with this Subpart, as follows:
- 1) When changing the method of compliance from subsection (a)(3) of this Section to subsection (a)(1) or (a)(2) of this Section, the owner or operator must conduct testing and monitoring according to the requirements of Section 217.394(a) through (e), as applicable. For this purpose, references to the "applicable compliance date" in Section 217.394(a)(2) and (a)(3) shall mean the date by which compliance with subsection (a)(1) or (a)(2) of this Section is to begin.
  - 2) An owner or operator of an affected unit that is changing the method of compliance from subsection (a)(1) or (a)(2) of this Section to subsection (a)(3) of this Section must:
    - A) Continue to operate the affected unit's control device, if that unit relied upon a NO<sub>x</sub> emissions control device for compliance with the requirements of subsection (a)(1) or (a)(2) of this Section; and
    - B) Prior to changing the method of compliance to subsection (c) of this Section, complete any outstanding initial performance testing, subsequent performances testing or monitoring as required by Section 217.394(a), (b), (c), (d) or (e) for the affected unit. If the deadline for such testing or monitoring has not yet occurred (e.g., the five-year testing or monitoring sequence has not yet elapsed), the owner or operator must complete the test or monitoring prior to changing the method of compliance to subsection (a)(3) of this Section. After changing the method of compliance to subsection (a)(3) of this Section, no additional testing or monitoring will be

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required for the affected unit while it is complying with subsection (a)(3) of this Section, except as provided for in Section 217.394(f).

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Standards and Limitations for Organic Material Emissions for Area Sources
- 2) Code Citation: 35 Ill. Adm. Code 223
- 3) Section Number: 223.205                      Proposed Action:  
Amend
- 4) Statutory authority: Implementing Section 10, and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27, and 28]
- 5) A complete description of the subjects and issues involved: For a more detailed description of this rulemaking, see the Board's November 4, 2010, opinion and order Air Quality Standards Clean-Up: Amendments to 35 Ill. Adm. Code 217, 223, 243 (R09-19).

The Illinois Environmental Protection Agency (Agency) submitted this rulemaking proposal to update Part 243 of the Board's air regulations to reflect revised National Ambient Air Quality Standards (NAAQS) adopted by the United States Environmental Protection Agency.

The record in this proceeding reveals an error in Part 223 in the name of one category of adhesives subject to volatile organic material emission limits. Specifically, the Agency has sought to correct a single word in the name of that category so that it matches the corresponding definition. The Board submits the Agency's proposed correction for first-notice publication in this docket.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of statewide policy objectives: The proposed amendment does not create or expand a State mandate as defined in Section 3 of the State Mandates Act [30 ILCS 805].

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- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R09-19 and be addressed to:

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

Address questions to Tim Fox at 312-814-6085

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

- 13) Initial regulatory flexibility analysis: In Part 223, the Board in this docket proposes solely to correct the name of a category of adhesives at Section 223.205(a)(2). Specifically, the Board proposes to change that name from "Adhesives – Construction, Panel and Floor Contact" to "Adhesives – Construction, Panel and Floor Covering" to correspond to a definition for that category.
- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: While the corrected name for the category of adhesives would clarify standards for construction, panel, and floor covering adhesives, it is not expected to have a substantive effect on any types of small businesses, small municipalities and not-for-profit corporations.
- B) Reporting, bookkeeping or other procedures required for compliance: As the amendment to Part 223 merely corrects and clarifies the name of one category of adhesives, the proposal does not itself require procedures for compliance.
- C) Types of professional skills necessary for compliance: As the amendment to Part 223 merely corrects and clarifies the name of one category of adhesives, the proposal does not itself require any types of professional skills for compliance.

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

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

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- 223.360 Methacrylate Traffic Coating Markings
- 223.370 Test Methods

**AUTHORITY:** Implementing Section 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28].

**SOURCE:** Adopted in R08-17 at 33 Ill. Reg. 8224, effective June 8, 2009; amended in R09-19 at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: CONSUMER AND COMMERCIAL PRODUCTS

**Section 223.205 Standards**

- a) Except as provided in Section 223.207, 223.230, 223.240, or 223.245, no person shall sell, supply, offer for sale, or manufacture for sale in Illinois any consumer product manufactured on or after July 1, 2009 that contains VOMs in excess of the limits specified in this subsection:

**Affected Product****% VOM by Weight**

- 1) Adhesives – Spray

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A)	Mist Spray	65
B)	Web Spray	55
C)	Special Purpose Spray Adhesives	
i)	Mounting, Automotive Engine Compartment, and Flexible Vinyl	70
ii)	Polystyrene Foam and Automotive Headliner	65
iii)	Polyolefin and Laminate Repair/Edgebanding	60
2)	Adhesives – Construction, Panel, and Floor <a href="#">Covering</a> <del>Contaet</del>	15
3)	Adhesives – General Purpose	10
4)	Adhesives – Structural Waterproof	15
5)	Air Fresheners	
A)	Single Phase Aerosol	30
B)	Double Phase Aerosol	25
C)	Liquids/Pump Sprays	18
D)	Solids/Gel	3
6)	Antiperspirants	
A)	Aerosol	40 HVOM 10 HVOM
B)	Non-Aerosol	0 MVOM 0 MVOM

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7)	Automotive Brake Cleaners	45
8)	Automotive Rubbing or Polishing Compound	17
9)	Automotive Wax, Polish, Sealant, or Glaze	
	A)    Hard Paste Waxes	45
	B)    Instant Detailers	3
	C)    All Other Forms	15
10)	Automotive Windshield Washer Fluids	35
11)	Bathroom and Tile Cleaners	
	A)    Aerosol	7
	B)    All Other Forms	5
12)	Bug and Tar Remover	40
13)	Carburetor or Fuel-Injection Air Intake Cleaners	45
14)	Carpet and Upholstery Cleaners	
	A)    Aerosol	7
	B)    Non-Aerosol (Dilutables)	0.1
	C)    Non-Aerosol (Ready-to-Use)	3.0
15)	Charcoal Lighter Material	see Section 223.220
16)	Cooking Spray – Aerosol	18
17)	Deodorants	

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	A)	Aerosol	0 HVOM 10 HVOM
	B)	Non-Aerosol	0 MVOM 0 MVOM
18)		Dusting Aids	
	A)	Aerosol	25
	B)	All Other Forms	7
19)		Engine Degreasers	
	A)	Aerosol	35
	B)	Non-Aerosol	5
20)		Fabric Protectants	60
21)		Floor Polishes/Waxes	
	A)	Products for Flexible Flooring Materials	7
	B)	Products for Nonresilient Flooring	10
	C)	Wood Floor Wax	90
22)		Floor Wax Strippers	see Section 223.209
23)		Furniture Maintenance Products	
	A)	Aerosol	17
	B)	All Other Forms Except Solid or Paste	7
24)		General Purpose Cleaners	

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A)	Aerosol	10
B)	Non-Aerosol	4
25)	General Purpose Degreasers	
A)	Aerosol	50
B)	Non-Aerosol	4
26)	Glass Cleaners	
A)	Aerosol	12
B)	Non-Aerosol	4
27)	Hair Mousses	6
28)	Hairshines	55
29)	Hairsprays	55
30)	Hair Styling Gels	6
31)	Heavy Duty Hand Cleaner or Soap	8
32)	Insecticides	
A)	Crawling Bug (Aerosol)	15
B)	Crawling Bug (All Other Forms)	20
C)	Flea and Tick	25
D)	Flying Bug (Aerosol)	25

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E)	Flying Bug (All Other Forms)	35
F)	Foggers	45
G)	Lawn and Garden (Aerosol)	20
H)	Lawn and Garden (All Other Forms)	3
I)	Wasp and Hornet	40
33)	Laundry Prewash	
	A) Aerosols/Solids	22
	B) All Other Forms	5
34)	Laundry Starch Products	5
35)	Metal Polishes/Cleansers	30
36)	Multi-Purpose Lubricant (Excluding Solid or Semi-Solid Products)	50
37)	Nail Polish Removers	75
38)	Non-Selective Terrestrial Herbicide – Non-Aerosol	3
39)	Oven Cleaners	
	A) Aerosols/Pump Sprays	8
	B) Liquids	5
40)	Paint Removers or Strippers	50
41)	Penetrants	50
42)	Rubber and Vinyl Protectants	

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A)	Aerosol	10
B)	Non-Aerosol	3
43)	Sealants and Caulking Compounds	4
44)	Shaving Creams	5
45)	Silicone-Based Multi-Purpose Lubricants (Excluding Solid or Semi-Solid Products)	60
46)	Spot Removers	
A)	Aerosol	23
B)	Non-Aerosol	8
47)	Tire Sealants and Inflators	20
48)	Undercoatings – Aerosols	40
b)	No person shall sell, supply, offer for sale, or manufacture for sale in Illinois, on or after July 1, 2009, any antiperspirant or deodorant that contains any compound listed below:	
	Benzene	
	Ethylene Dibromide	
	Ethylene Dichloride	
	Hexavalent Chromium	
	Asbestos	
	Cadmium (metallic cadmium and cadmium compounds)	

POLLUTION CONTROL BOARD

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Carbon Tetrachloride

Trichloroethylene

Chloroform

Vinyl Chloride

Inorganic Arsenic

Nickel (metallic nickel and inorganic nickel compounds)

Perchloroethylene

Formaldehyde

1,3-Butadiene

Inorganic Lead

Dibenzo-p-dioxins and dibenzofurans chlorinated in the 2,3,7 and 8 positions and containing 4,5,6 or 7 chlorine atoms

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Air Quality Standards
- 2) Code citation: 35 Ill. Adm. Code 243
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
243.101	Amend
243.104	Amend
243.107	Amend
243.108	Amend
243.120	Amend
243.122	Amend
243.125	Amend
243.126	Amend
- 4) Statutory authority: Implementing Section 10, and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27, and 28]
- 5) A complete description of the subjects and issues involved: For a more detailed description of this rulemaking, see the Board's November 4, 2010, opinion and order Air Quality Standards Clean-Up: Amendments to 35 Ill. Adm. Code 217, 223, 243 (R09-19).  
  
The Illinois Environmental Protection Agency (Agency) submitted this rulemaking proposal to update Part 243 of the Board's air regulations to reflect revised National Ambient Air Quality Standards (NAAQS) adopted by the United States Environmental Protection Agency.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The Agency, which originated this rulemaking with the Board, did not indicate that it used a published study or report in developing the proposal.
- 7) Will this rulemaking replace emergency rulemakings currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes

Code of Federal Regulations:

Lead, 40 CFR 50, Appendices G and Q (2008)

## POLLUTION CONTROL BOARD

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Reference method for the determination of particulate matter as PM2.5 in the atmosphere, 40 CFR 50, Appendix L, 73 Fed. Reg. 61144 (Oct. 17, 2006)

Interpretation of the national ambient air quality standards for PM2.5, 40 CFR 50, Appendix N, 73 Fed. Reg. 1497 (Jan. 9, 2008)

Interpretation of the NAAQS for O3, 40 CFR 50, Appendix P, 73 Fed. Reg. 16436 (Mar. 27, 2008)

National Ambient Air Quality Standards for Lead: Final Rule, 40 CFR 50, 51, 53, and 58, 73 Fed. Reg. 66964 (Nov. 12, 2008)

Interpretation of the National Ambient Air Quality Standards for Lead, 40 CFR 50, Appendix R, 73 Fed. Reg. 66964 (Nov. 12, 2008)

- 10) Are there any other proposed rulemakings on this Part? No
- 11) Statement of statewide policy objectives: The proposed amendments do not create or expand a State mandate as defined in Section 3 of the State Mandates Act [30 ILCS 805].
- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R09-19 and be addressed to:

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

Address questions to Tim Fox at 312-814-6085.

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

## POLLUTION CONTROL BOARD

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- 13) Initial regulatory flexibility analysis: In proposing these amendments to Part 243, the Agency indicated that they would not impose new requirements but would merely update Illinois' regulations to reflect current federal standards that the United States Environmental Protection Agency had adopted under the Clean Air Act.
- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: As the proposal intends to incorporate current federal law, it does not itself affect any types of small businesses, small municipalities, or not-for-profit corporations by imposing new substantive requirements.
- B) Reporting, bookkeeping or other procedures required for compliance: As the proposal intends to incorporate current federal law, it does not require reporting, bookkeeping, or other procedures for compliance.
- C) Types of professional skills necessary for compliance: As the proposal intends to incorporate current federal law, it does not require professional skills for compliance.
- 14) Regulatory Agenda on which this rulemaking was summarized January 2009

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

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER I: AIR QUALITY STANDARDS AND EPISODESPART 243  
AIR QUALITY STANDARDS

## SUBPART A: GENERAL PROVISIONS

Section	
243.101	Definitions
243.102	Preamble
243.103	Applicability
243.104	Nondegradation
243.106	Monitoring
243.107	Reference Conditions
243.108	Incorporations by Reference

## SUBPART B: STANDARDS AND MEASUREMENT METHODS

Section	
243.120	<del>PM<sub>10</sub> and PM<sub>2.5</sub></del> <del>PM-10</del>
243.121	Particulates (Repealed)
243.122	Sulfur Oxides (Sulfur Dioxide)
243.123	Carbon Monoxide
243.124	Nitrogen Dioxide
243.125	<del>8-Hour</del> Ozone
243.126	Lead

243.APPENDIX A	Rule into Section Table
243.APPENDIX B	Section into Rule Table
243.APPENDIX C	Past Compliance Dates

AUTHORITY: Implementing Section 10 and authorized by Section 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27, and 28].

SOURCE: Adopted as Chapter 2: Air Pollution, Part III: Air Quality Standards, in R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R80-11, 46 PCB 125, at 6 Ill. Reg.

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5804, effective April 22, 1982; amended in R82-12, at 7 Ill. Reg. 9906, effective August 18, 1983; codified at 7 Ill. Reg. 13630; amended in R91-35 at 16 Ill. Reg. 8185, effective May 15, 1992; amended in R09-19 at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

**Section 243.101 Definitions**

- a) Except as ~~hereinafter~~ stated in this Part and unless a different meaning of a term is clear from its context, the definitions of terms used in this Part shall be the same as those used in the Environmental Protection Act [415 ILCS 5](Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 1001 et seq.) (Act).
- b) All terms ~~that~~which appear in this Part have the definitions specified by 35 Ill. Adm. Code ~~Parts~~ 201 or 211 ~~of this Chapter~~.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 243.104 Nondegradation**

Existing ambient air quality ~~that~~which is better than the established ambient air quality standards at the date of their adoption will be maintained in its present high quality. Such ambient air quality shall not be lowered unless and until it is proved to the Illinois Environmental Protection Agency (Agency) that ~~the~~such change is justifiable as a result of necessary economic and social development and will not interfere with or become injurious to human health or welfare.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 243.107 Reference Conditions**

All measurements of air quality, ~~except~~ PM<sub>2.5</sub>, are corrected to a reference temperature of 25°C, and to a reference pressure of 760 millimeters of mercury (1013.2 millibars). PM<sub>2.5</sub> measurements shall be based upon the actual ambient air volume measured at the actual temperature and pressure at the monitoring site during the measurement period.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 243.108 Incorporations by Reference**

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions:

- a) Pararosaniline method, 40 CFR 50, ~~appendix~~Appendix A (1982).
- b) Non-dispersive infrared spectrometry technique, 40 CFR 50, ~~appendix~~Appendix C (1982), 36 Fed. Reg. 22391, November 25, 1971.
- c) Colorimetric method, 36 Fed. Reg. 22396, November 25, 1971.
- d) Ozone-ethylene reaction method, 40 CFR 50, ~~appendix~~Appendix D (1982), 36 Fed. Reg. 22392, November 25, 1971.
- e) Lead, 40 CFR 50, ~~appendices G and Q (2008)~~Appendix G (1982), ~~43 Fed. Reg. 46258, October 5, 1978, as amended at 44 Fed. Reg. 37915, June 29, 1979; 46 Fed. Reg. 44163, September 3, 1981.~~
- f) Reference method for the determination of particulate matter as ~~PM<sub>10</sub>~~PM-10 in the atmosphere, 40 CFR 50, ~~appendix~~Appendix J (1990).
- g) Interpretation of the ~~National Ambient Air Quality Standards (NAAQS)~~national ambient air quality standards for particulate matter, 40 CFR 50, ~~appendix~~Appendix K, ~~73 Fed. Reg. 61144 (October 17, 2006)~~(1990).
- h) Reference method for the determination of particulate matter as PM<sub>2.5</sub> in the atmosphere, 40 CFR 50, appendix L, 73 Fed. Reg. 61144 (October 17, 2006).
- i) Interpretation of the NAAQS for PM<sub>2.5</sub>, 40 CFR 50, appendix N, 73 Fed. Reg. 1497 (January 9, 2008).
- j) Interpretation of the NAAQS for O<sub>3</sub>, 40 CFR 50, appendix P, 73 Fed. Reg. 16436 (March 27, 2008).
- k) The NAAQS for Lead; Final Rule, 40 CFR 50, 51, 53, and 58, 73 Fed. Reg. 66964 (November 12, 2008).
- l) Interpretation of the NAAQS for Lead, 40 CFR 50, appendix R, 73 Fed. Reg. 66964 (November 12, 2008).

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(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: STANDARDS AND MEASUREMENT METHODS

**Section 243.120 ~~PM<sub>10</sub> and PM<sub>2.5</sub>~~PM-10**

- a) Standards. The primary and secondary ambient air quality standards for ~~PM<sub>10</sub>~~PM-10 are a maximum 24-hour average concentration of 150 micrograms per cubic meter. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter is equal to or less than one, as measured and determined in accordance with subsection (b).:
- ~~1) An annual arithmetic mean concentration of 50 micrograms per cubic meter; and~~
  - ~~2) A maximum 24-hour concentration of 150 micrograms per cubic meter, not to be exceeded more than once per year.~~
- b) Measurement Method. For determining conformance with the ~~PM<sub>10</sub>~~PM-10 ambient air quality standards, ~~PM<sub>10</sub>~~PM-10 shall be measured by the method described in 40 CFR 50, ~~appendix~~Appendix J (incorporated by reference in Section 243.108). The computations necessary for analyzing particulate matter data to determine attainment of the ~~PM<sub>10</sub>~~PM-10 standards are described in 40 CFR 50, ~~appendix~~Appendix K (incorporated by reference in Section 243.108).
- c) Standards. The primary and secondary ambient air quality standards for PM<sub>2.5</sub> are:
- 1) An annual arithmetic mean concentration of 15.0 micrograms per cubic meter and as measured and determined in conformance with subsection (d).
  - 2) A maximum 24-hour concentration of 35 micrograms per cubic meter, at the 98<sup>th</sup> percentile value, and as measured and determined in conformance with subsection (d).
- d) Measurement Method for PM<sub>2.5</sub>. For determining conformance with the PM<sub>2.5</sub> ambient air quality standards, PM<sub>2.5</sub> shall be measured by the method described in

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40 CFR 50, appendix L (incorporated by reference in Section 243.108). The computations necessary for analyzing particulate matter data to determine attainment of the PM<sub>2.5</sub> standards are described in 40 CFR 50, appendix N (incorporated by reference in Section 243.108).

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 243.122 Sulfur Oxides (Sulfur Dioxide)**

- a) Primary Standards. The primary ambient air quality standards for sulfur oxides measured as sulfur dioxide are:
- 1) An annual arithmetic mean concentration of 80 micrograms per cubic meter (0.03 ppm); and
  - 2) A maximum 24-hour concentration, not to be exceeded more than once per year, of 365 micrograms per cubic meter (0.14 ppm).
- b) Secondary Standard. The secondary ambient air quality standard for sulfur oxides measured as sulfur dioxide is a maximum 3-hour concentration not to be exceeded more than once per year of 1,300 micrograms per cubic meter (0.5 ppm).
- c) Measurement Method. For determining conformance with sulfur oxide air quality standards, sulfur oxides shall be measured as sulfur dioxide by the pararosaniline method described in 40 CFR 50, appendix App. A; (1982), or by an equivalent method of proof approved by the Agency.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 243.125 8-Hour Ozone**

- a) Standard. The primary and secondary ambient air quality ~~standards~~standard for ozone ~~are 0.075 is 0.12 ppm daily (235 micrograms per cubic meter)~~ maximum 8-hour average 1-hour concentration, measured and determined in accordance with subsection (b) not to be exceeded on more than one day per year.
- b) Measurement Method. For determining conformance with the ozone air quality standard, ozone shall be measured by the ozone-ethylene reaction method as described in 40 CFR 50, appendix App. D; (1982) or equivalent method as

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described in 40 CFR 50, Section 50.1, as prescribed by 40 CFR 53 (2003), and the Interpretation of the NAAQS for O<sub>3</sub>, 40 CFR 50, appendix P, 73 Fed. Reg. 16436 (March 27, 2008), as amended.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 243.126 Lead**

- a) Standard. The primary and secondary ambient air quality standards for lead are 0.15 and its compounds are 1.5 micrograms per cubic meter, maximum rolling three month average measured and determined over a three-year period~~maximum arithmetic mean average over a calendar quarter.~~
- b) Measurement Method. For determining conformance with the ambient air quality standards for lead and its compounds, lead and its compounds shall be measured by the atomic absorption spectrometry or equivalent method ~~as~~ described in 40 CFR 50, appendices G and Q, incorporated by reference in Section 243.108 of this Part. The primary and secondary ambient air quality standards shall be determined in accordance with 40 CFR 50, appendix R, incorporated by reference in Section 243.108 of this Part.~~App. G (1982).~~

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Department of Personnel
- 2) Code Citation: 80 Ill. Adm. Code 420
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
420.10	Amendment
420.200	Amendment
420.310	Amendment
420.340	Amendment
420.380	Amendment
420.390	Amendment
420.600	Amendment
420.610	Amendment
420.620	Amendment
420.640	Amendment
420.650	Amendment
420.660	Amendment
420.700	Amendment
420.715	Amendment
420.720	Amendment
420.800	Amendment
420.1015	New
- 4) Statutory Authority: 15 ILCS 310/10
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking seeks to conform to current merit practices, regulations of federal and State legislative enactments and technical changes.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No

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- 11) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days after the publication of this Notice to:

Stephan Roth or Linda Green  
Office of the Secretary of State  
Department of Personnel  
Room 197 Howlett Building  
Springfield, Illinois 62756

217/782-1750

All comments must be in writing.

- 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 did not appear on either of the 2 most recent Regulatory Agendas, since the department did not anticipate this rulemaking at that time.

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE B: PERSONNEL RULES, PAY PLANS, AND  
POSITION CLASSIFICATIONS  
CHAPTER II: SECRETARY OF STATE

PART 420  
DEPARTMENT OF PERSONNEL

SUBPART A: INTRODUCTION

Section  
420.10           Definitions

SUBPART B: CLASSIFICATION AND PAY

Section  
420.200       Positions  
420.210       Position Classification  
420.220       Pay Plan

SUBPART C: MERIT AND FITNESS

Section  
420.300       Application and Examination  
420.310       Appointment and Selection  
420.320       Trainees  
420.330       Intermittents  
420.340       Continuous Service  
420.350       Performance Evaluation Forms  
420.360       Probationary Status  
420.370       Promotions  
420.380       Employee Transfers  
420.390       Demotion  
420.400       Layoffs and Reemployment  
420.410       Voluntary Reduction  
420.415       Sworn Personnel – Inter-Agency Assignment  
420.420       Resignation and Reinstatement  
420.430       Discipline, Discharge, and Termination  
420.435       Return of State Property

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## SUBPART D: CONDITIONS OF EMPLOYMENT

Section	
420.600	Grievance Procedure
420.610	Sick Leave
420.620	Personal Leave
420.630	On-The-Job Injury – Industrial Disease
420.640	Leaves of Absence Without Pay
420.645	Family Leave
420.650	Limitations on Leaves of Absence
420.660	Leaves of Absence – Special
420.665	Leaves of Absence – Sworn Personnel – Inter-Agency Assignment
420.670	Leaves of Absence – Special – Salary (Repealed)
420.680	Employee Rights After Leave
420.690	Leave of Absence – Election to Public Office
420.700	Failure to Return from Leave of Absence
420.710	Military and Peace Corps Leave
420.715	Disaster Services Leave with Pay
420.720	Leave for Annual Military Reserve Training or Special Duty
420.730	Leave for Military Physical Examinations
420.740	Leave to Take Exempt Position (Repealed)
420.760	Non-service Connected Disability Leave
420.770	Attendance in Court
420.800	Vacation
420.810	Work Schedules
420.820	Overtime
420.825	Temporary Assignment (Repealed)
420.830	Holidays
420.835	Notification of Absence

## SUBPART E: GENERAL PROVISIONS

Section	
420.1000	Records
420.1010	Benefits
<a href="#">420.1015</a>	<a href="#">Proration of Rights and Benefits</a>
420.1020	Prohibition of Discrimination
420.1030	Other Provisions

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AUTHORITY: Implementing and authorized by Section 10 of the Secretary of State Merit Employment Code [15 ILCS 310/10].

SOURCE: Emergency rule adopted December 29, 1977; amended at 3 Ill. Reg. 49, p. 159, effective October 1, 1979; amended at 4 Ill. Reg. 40, p. 219, effective December 1, 1980; amended at 6 Ill. Reg. 3302, effective March 16, 1982; amended at 6 Ill. Reg. 7494, effective June 16, 1982; amended at 7 Ill. Reg. 11526, effective September 7, 1983; codified at 8 Ill. Reg. 2653; recodified at 10 Ill. Reg. 15659; amended at 12 Ill. Reg. 6766, effective April 1, 1988; amended at 17 Ill. Reg. 1652, effective February 1, 1993; emergency amendment at 21 Ill. Reg. 1710, effective January 27, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 5937, effective April 24, 1997; emergency amendment at 27 Ill. Reg. 18259, effective November 17, 2003, for a maximum of 150 days; emergency expired April 14, 2004; amended at 28 Ill. Reg. 7676, effective May 24, 2004; emergency amendment at 32 Ill. Reg. 3013, effective February 13, 2008, for a maximum of 150 days; emergency amendment repealed at 32 Ill. Reg. 6659, effective April 2, 2008; amended at 32 Ill. Reg. 15017, effective September 8, 2008; amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: INTRODUCTION

**Section 420.10 Definitions**

"Allocation": The assignment of a position to a class based on duties, responsibilities and requirements.

"Appropriate Supervisor": An employee who has the authority to resolve an employee's grievance.

~~"Board": Refers to the Merit Advisory Board.~~

"Certified Employee": An employee who has successfully completed a required probationary period and attained certified status during the employee's most recent period of continuous ~~State~~ service.

"Certified Status": Status achieved through the completion of a probationary period.

"Class": A composite of positions ~~that~~~~which~~ are sufficiently similar, in terms of duties and responsibilities, requiring the same or related ~~knowledge~~~~knowledges~~,

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## NOTICE OF PROPOSED AMENDMENTS

skills, abilities and licenses (if required) to fulfill them, and the same title, selection instrument, salary range or rate of pay that would apply equitably to each. Example: All Executive I positions in the Office of the Secretary of State are a class.

"Code": The Secretary of State Merit Employment Code [15 ILCS 310].

"Commission": The Secretary of State Merit Commission.

"Continuous Service": The uninterrupted period of service from the date of original appointment to State service.

"Department of Personnel": The Secretary of State Department of Personnel.

"Director of Personnel": The Director of the Secretary of State Department of Personnel.

"Employee": Any employee on the payroll as well as any employee on a leave of absence granted pursuant to this Part.

"Executive or Administrative Employee": Those employees who have principal administrative responsibility for the determination of policy or principal administrative responsibility for the way in which policies are carried out.

"Executive Security Officer": A law enforcement officer charged with executive protective duties.

"Highly Confidential Employee": An employee who occupies a position ~~that which~~, by its nature, is entrusted with private, restricted or privileged information of a type ~~that which~~ would preclude its being subject to Jurisdiction B.

"Immediate Family": Father, mother, brother, sister, son, daughter and spouse, including adoptive ~~and~~ custodial ~~relationships~~ and "in-laws" ~~when residing in the employee's household. For bereavement purposes, the term includes grandparents, grandchildren, parents-in-law, brother or sister-in-law, and children-in-law.~~

"Jurisdiction A": The Section of the Code ~~that which~~ deals with the classification and compensation of positions in the Office of the Secretary of State.

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"Jurisdiction B": The Section of the Code ~~that~~which deals with merit and fitness as it applies to positions in the Office of the Secretary of State.

"Jurisdiction C": The Section of the Code ~~that~~which deals with the conditions of employment of positions of the Office of the Secretary of State.

"Licensed Attorney": Attorneys who are licensed to practice law within the State of Illinois.

"Next Higher Supervisor": An employee who is authorized to adjust grievance resolutions offered by an Appropriate Supervisor; an employee who may be locally or regionally assigned to resolve Level 2 grievances.

"Organizational Entity": An organization whose chief executive officer reports directly to the Secretary of State or the Assistant Secretary of State.

"Pay Plan": The plan, authorized by the Secretary of State Merit Employment Code, that sets forth rules for salary treatment when processing personnel transactions and other compensation actions and identifies the various salary schedules.

"Pay Status": An employee who is active on the payroll of the Office of the Secretary of State and who receives wages for hours worked, paid holidays and benefit time used.

"Position": A set of duties, authorities and responsibilities.

"Position Description": The official document that identifies the duties, responsibilities, location and reporting relationships of a position.

"Probationary Period": A period of six calendar months (or 979 hours) immediately following an original appointment or reinstatement, or a period of three months (489.5 hours) following a promotion.

~~"Seniority": In totality, the unbroken service of an employee by the Office of the Secretary of State, or such service immediately precedent to employment by the Secretary of State which was unbroken and accrued within State Service.~~

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"Series": A class series is composed of two or more individual classes ~~that~~which are directly related in type of work performed, responsibility exercised and background experience required, while differing in levels, difficulty and/or achievement of these same terms. The classes of a series are similar in title and are usually sequential in nature from lowest to highest. Example: Executive I, II, III, IV and V are a class series.

"Sworn Personnel – Inter-Agency Assignment": Employees of the Office, vested with police authority, who are assigned to an affiliated outside organization for a determined time frame to perform police officer duties.

"Time of Hostilities": Any period of time during which a declaration of war by the United States Congress has been or is in effect or is recognized by the issuance of a Presidential Proclamation or Executive Order as defined in Section 10b.7 of the Secretary of State Merit Employment Code [15 ILCS 310/10b.7].

"Title": A title is the name by which a class is known. Example: Executive I is a title.

"Unskilled Positions": Positions whose primary requirement is that incumbents be of good physical condition.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: CLASSIFICATION AND PAY

**Section 420.200 Positions**

A position is a set of duties and responsibilities requiring the appointment of one or more persons for the completion of those duties and responsibilities. A written statement of the duties and responsibilities of each position shall be maintained by the Director of Personnel. The following types of positions may be established in the Office of the Secretary of State.

- a) Exempt – Positions established in accordance with sections of the Merit Employment Code describing exempt positions as set forth in Section 420.310(i)(1). If a certified employee accepts an appointment to a position exempt from Jurisdiction B of the Secretary of State Merit Employment Code ~~[15 ILCS 310]~~, the employee will retain his/her original certified status. If a certified employee's position is declared exempt from Jurisdiction B, certified status shall

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be retained in the position.

- 1) A certified employee who accepts appointment to an exempt position will retain his or her certified status only for the highest class title in which certified status was achieved, regardless of the class title of the exempt position.
  - 2) With approval of the Director of Personnel, a certified employee may be removed from an exempt position by management directive in accordance with the provisions of Section 420.380 (Employee Transfers). The employee may also accept a voluntary reduction in accordance with Section 420.410 or a promotion in accordance with Section 420.370, or may be removed from the position in accordance with Section 420.390 (Demotion) or Section 420.430(f) (Discharge of Certified Employee), if applicable. The transaction to remove the employee from the position will be predicated on the class title in which the employee was certified prior to the exempt appointment.
- b) Permanent full-time or part-time positions for which the duties and responsibilities are performed on a regular continuous basis. Any type of appointment described in Section 420.310(i)(1), (4) or (5) or 420.330(a) may be made to such a position.
  - c) Temporary – Positions for which the duties and responsibilities are performed for not more than 6 months out of any 12-month period as set forth in Section 420.310(i)(10) [or positions authorized by the Illinois Pension Code \[40 ILCS 5/14-111\] for a period not to exceed 75 working days in a calendar year.](#)
  - d) Permanent Intermittent – [Positionspositions](#) for which the duties and responsibilities are performed on a regular or nonregular, continuous or noncontinuous basis for periods requiring less than full-time employment. No appointment other than probationary and/or certified may be made to such a position.
  - e) Trainee – For positions established in accordance with an approved training program as set forth in Section 420.320(a).

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## SUBPART C: MERIT AND FITNESS

**Section 420.310 Appointment and Selection**

- a) **Eligible Lists:** The Department of Personnel shall establish and maintain lists of qualified applicants for positions covered by Jurisdiction B of the Code. Such applicants shall have successfully qualified through competitive examinations as provided in Section 420.300(a). The names of qualified applicants shall be arranged in the order of their relative excellence, whether by numerical grade or category grouping. The length of time an eligible applicant's name may remain on the eligible list shall be established by the Director of Personnel.
- b) **Responsibilities of Eligibles:** It shall be the responsibility of each eligible applicant to inform the Department of Personnel in writing of any changes in name, address or availability for employment.
- c) **Geographical Preference:** Applicants for employment shall specify one or more of the locations or areas in which they will accept employment from those choices made available at the time of examination or that may be made available at a later date. Unless otherwise noted in the examination announcement, applicants may select a statewide preference, but will not be considered for employment until all available candidates for the specific geographical location have been exhausted.
- d) **Removal of Names From Eligible Lists:**
  - 1) The Director of Personnel shall remove names from an eligible list for cause, including but not limited to any of the following reasons:
    - A) Appointment of the eligible applicant from the eligible list;
    - B) Death of an eligible applicant;
    - C) Notice by postal authorities that they are unable to locate the eligible applicant at his/her last known address;
    - D) Attempt by an eligible applicant to practice any deception or fraud in connection with an examination or application for employment;
    - E) Evidence that the eligible applicant lacks any of the qualifications

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- required for the class for which he/she was erroneously declared eligible;
- F) Request of an eligible applicant to remove his/her name from the eligible list;
  - G) The applicant's name has remained on the eligible list for 12 months; or
  - H) The applicant has been discharged, terminated, or otherwise involuntarily separated from employment with the Office of the Secretary of State.
- 2) The Director of Personnel may remove names from an eligible list, upon notice to the applicant, for reasons including but not limited to the following:
- A) Failure of an eligible applicant, upon referral, to reply or to report for interview;
  - B) After accepting employment, failure without good cause to report to work within the time prescribed by the employing department or the Department of Personnel;
  - C) Failure of an eligible applicant, upon request, to furnish written evidence of availability for employment;
  - D) Specifying conditions of employment by an eligible applicant that are not associated with the class for which the applicant is eligible;
  - E) Refusal of an eligible applicant to accept 3 separate offers of employment;
  - F) After an eligible applicant has been passed over 3 times by the same department, the department may request removal of the eligible applicant from the list for good and sufficient cause;
  - G) Poor work history of the eligible applicant;

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- H) Former experience, history or background of the eligible applicant is not compatible with duties and responsibilities of the class;
  - I) Physical inability of eligible applicant to perform the duties and responsibilities of the class;
  - J) After eligible applicant accepts promotion;
  - K) When a change in classification or testing standards, or another change, requires removal;
  - L) Conviction of an eligible applicant of a felony or of a crime that is relevant to the position for which the person is testing or being hired; or
  - M) Conviction of a crime involving alcohol or drugs.
- e) Replacement of Names on Eligible List:
- 1) The Director of Personnel may restore a name to the same eligible list when that action would be in the best interest of the Office of the Secretary of State, including but not limited to:
    - A) Names of eligible applicants who, upon removal from list for failure to reply due to powers beyond control, did not receive referral in time to respond in the prescribed amount of time;
    - B) Names of veterans returning from active military service of not more than 4 years shall be restored to an eligible list for a period of 12 months for the same class if the request is made by the veteran within 90 days after discharge, or after release from hospitalization continuing after discharge but for not more than one year. The eligible applicant must provide evidence of satisfactory completion of training and service when making the request and be qualified to perform the current duties of the class;
    - C) Names of employees who are laid off during their probationary period shall be returned to the eligible list for the class in which the layoff occurred.

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- 2) Names so restored shall be at the grade in effect when the removal from the list was made and may not remain on the list after that period of time equal to the unexpired time remaining of the original eligibility, except as provided in subsection (e)(1)(B).
- f) Appointment from Eligible List: When an appointment to a position is made from an eligible list resulting from an open competitive examination, the appointment shall be made from among those available persons with the 10 highest grades, if the list is in order of numeric examination grade, ~~or~~ If the list is in category groupings, the appointment shall be made from among available persons in the highest ranking category in which there are group of 3 or more available eligibles, as well as those in all higher categories if the list is in category groupings, except as provided for under subsection (g).
- g) Extension of Jurisdiction B:
  - 1) Employees in positions to which Jurisdiction B is extended pursuant to Sections 5d and 10d of the Merit Employment Code shall be continued in those positions and shall attain certified status in those positions provided they pass a qualifying examination prescribed by the Director of Personnel within 6 months after the jurisdiction is extended and provided that they satisfactorily complete their respective probationary periods.
  - 2) Appropriate standards for probationary appointments shall be prepared by the Director of Personnel and appointments of employees in accordance with subsection (g)(1) shall be without regard to eligible lists. Further, these appointments shall be made without regard to the provisions of subsection (f). Nothing in this subsection (g) shall preclude the reclassification or reallocation, as provided by this Part, of any position held by an incumbent.
- h) Appointments – Positions Subject to Jurisdiction B: Positions covered by Jurisdiction B of the Code shall be filled in one of the following ways:
  - 1) By appointment of an eligible applicant standing among the 10 highest scores on an eligible list that is numerically rated;
  - 2) By appointment of an eligible applicant from the highest ranking group of

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3 or more available eligibles from an eligible list that is not numerically rated;

- 3) By present employees (May 24, 1977) who have passed examinations in accordance with the Personnel Code [20 ILCS 415] under the Governor of Illinois and who having passed the probationary period shall be continued in their positions without further examination;
- 4) By present employees (May 24, 1977) who having been promoted in accordance with the rules under the Personnel Code under the Governor of the State of Illinois (~~8023~~ Ill. Adm. Code 302) shall be continued in their positions without further examination;
- 5) By present employees (May 24, 1977) who having passed examinations in accordance with the Personnel Code under the Governor of the State of Illinois, but who have not completed the probationary period shall be continued in their positions and be given credit for such probationary time toward the completion of the probationary period provided by this Part;
- 6) By all other present employees subject to Jurisdiction B who shall be continued in their positions providing that they have passed a qualifying examination within 9 months after May 24, 1977;
- 7) By present employees (May 24, 1977) or past employees who have rights or privileges arising under the Personnel Code under the Governor of Illinois or through judicial process and who shall be continued in the extent of such rights and privileges;
- 8) By an appointment to a position through promotion of an employee who is qualified pursuant to Section 420.370(b);
- 9) By emergency appointment for a period not in excess of 90 calendar days to meet emergency situations. Emergency appointments may be made without regard to eligible lists. These appointments may not be renewed;
- 10) By temporary appointments to positions that are temporary or seasonal in nature as determined by the Director of Personnel. These appointments shall not exceed 6 months out of any 12 month period or be temporary appointments to positions authorized by the Illinois Pension Code [40

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ILCS 5/14-111] for a period not to exceed 75 working days in a calendar year. Temporary appointments may be made without regard to eligible lists;

- 11) By provisional appointments to positions without competitive examination when there is no appropriate eligible list. Provisional appointments may not exceed 6 months out of any 12 month period;
- 12) By the transfer of employees from one position to another if the qualifications, responsibilities, duties and salary range are similar;
- 13) By reinstatement of persons who formerly held certified status under the Code, the Personnel Code [20 ILCS 415], the State Universities Civil Service Act [110 ILCS 70], the Comptroller Merit Employment Code [15 ILCS 410], or the State Treasurer Employment Code [15 ILCS 510]. To be eligible for reinstatement, these persons shall have resigned while in good standing or shall have been laid off from employment within their respective merit systems, except as provided in Section 420.430(k);
- 14) By reemployment of an employee whose name appears upon a reemployment list; the reemployment may be made to positions in the same or lower salary range as the salary range applicable to the position from which the person to be reemployed was laid off; reemployment appointments shall be of qualified employees and shall be made after consideration of continuous services and performance records;
- 15) By the appointment of trainees into training programs approved by the Director of Personnel; those appointments may be made with or without examination of applicants; trainees do not acquire any rights under Jurisdiction B of the Code by virtue of trainee appointments;
- 16) By the reduction in rank or class of an employee, for cause, with the prior approval of the Director of Personnel;
- 17) By the transfer of active, certified or probationary employees from the jurisdictions of the Personnel Code, the State Universities Civil Service Act, the Comptroller Merit Employment Code or the State Treasurer Employment Code, upon the approval of the Director of Personnel, to comparable positions of employment. A person so transferred shall retain

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the same status under the Code as that which [he or she](#) held under ~~their~~ previous merit employment.

- i) Appointments: The following types of appointments may be made by the Director of Personnel.
  - 1) Exempt: For persons in positions not subject to Jurisdiction B. If an exempt employee's position becomes subject to Jurisdiction B by reason of extension of Jurisdiction B, pursuant to Section 5d and 10d of the Code, the employee shall establish eligibility for the position by passing satisfactorily a qualifying examination prescribed by the Director of Personnel within 6 months after the extension of Jurisdiction B to the position. In all other cases, if an exempt employee's position becomes subject to Jurisdiction B, the employee shall establish eligibility for the position within 6 months by successfully competing in the open competitive examination and receiving a probationary appointment according to applicable rules.
  - 2) Emergency: For persons selected to meet emergency situations. Such appointments shall not exceed 90 calendar days, shall not be renewed, and may be made without regard to an eligible list. Notices of terminations shall be reported to the Director of Personnel.
  - 3) Temporary: For persons in positions to perform temporary or seasonal work [to be filled for no more than 6 months out of any 12 month period, or for persons in positions authorized by Section 14-111 of the Illinois Pension Code to be filled for no more than 75 working days per calendar year.](#) ~~No position shall be filled by temporary appointment for more than 6 months out of any 12 month period.~~
  - 4) Provisional: For persons in positions for which there are fewer than 10 available eligibles on the open competitive eligible list, if the list is in order of numeric examination grade, or fewer than 3 available eligibles, if the list is in category groupings. No positions shall be filled by provisional appointment for more than 6 months out of any 12 month period. If a provisional employee's position is allocated to a class for which there are available eligibles, eligibility for the positions shall be established within 90 days through successfully competing in the open competitive examination and receiving a probationary appointment

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according to subsection (i)(5).

- 5) Probationary: For persons appointed from an eligible list, for persons receiving a promotion and for persons being reinstated. If a probationary employee's position is declared exempt from Jurisdiction B, the balance of the probationary period shall be served after which certified status shall be attained.
- 6) Trainee: For persons in positions pursuant to established trainee and apprenticeship programs.

j) ~~Permanent Part Time: Permanent part time employees shall have all rights and benefits granted by Jurisdictions A, B and C based on the proration of the part-time scheduled hours against the normal 1957.5 hour work year.~~

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.340 Continuous Service**

- a) Definition:
  - 1) Continuous service is the uninterrupted period of service from the date of original appointment to State service or to service in any other system participating in the Retirement Systems Reciprocal Act [40 ILCS 5/20], except as provided in subsection (g).
  - 2) Employees who have accrued continuous service in State service or who have accrued continuous service in a position covered by the Retirement Systems Reciprocal Act, and who have been transferred to or who have accepted an appointment to a position in the Office of the Secretary of State, shall be given credit for the earlier service to the extent determined by the Director of Personnel or required by law.
  - 3) Intermittent and permanent part-time employees shall accrue continuous service on a prorated basis, determined by the number of hours worked per year.
- b) Interruptions in Continuous Service: Continuous service shall be interrupted by:

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- 1) Resignation; provided, however, that continuous service will not be interrupted by resignation when an employee is employed in another position in State service within 4 calendar days after resignation;
  - 2) Discharge; provided, however, that continuous service shall not be interrupted if the employee is retained in the position after a hearing before the Merit Commission, or under other administrative review process, or by the court;
  - 3) Termination because an employee has not been reemployed within one year after layoff.
- c) Deductions from Continuous Service: Except as provided in subsection (f), the following shall be deducted from, but not interrupt, continuous service:
- 1) Time away from work for leaves of absence without pay totaling more than 30 days in any 12 month period;
  - 2) Time away from work because of disciplinary suspensions totaling more than 30 days in any 12 month period;
  - 3) Time away from work because of layoff.
- d) Veterans' Continuous Service:
- 1) Leaves of absence shall be granted to all employees, except temporary or emergency employees, who leave their positions and enter military service for 4 years or less (exclusive of any additional service imposed pursuant to law). An employee shall be restored to the same or similar position on making an application to the Department of Personnel within 90 days after separation from active duty, or after release from hospitalization continuing after discharge but for not more than one year. The employee must provide evidence of satisfactory completion of training and military service when making application and must be qualified to perform the duties of the position.
  - 2) Subject to the provisions of Section 420.310(f), a veteran who returns to service with the Office of the Secretary of State after having been granted a leave of absence from provisional status shall be required to pass the

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same or similar examination for his/her position within 90 days.

- 3) Trainees who have not previously done so and whose training was interrupted by military leave shall be required to qualify, if necessary, in an examination in the trainee class before granted allocation or noncompetitive promotion to a higher class.
- e) Peace or Job Corps Enrollees Continuous Service: Employees who volunteer and are accepted for service in the overseas or domestic peace or job corps shall be given a leave of absence from their position for the duration of their initial period of service and restored to the same or similar position provided that the employee returns to employment within 90 days after termination of service or release from hospitalization from a service connected disability.
- f) Accrual and Retention of Continuous Service During Certain Leaves: During an educational, military, peace or job corps, disaster services, family leave (pursuant to Section 420.645), Family and Medical Leave (FMLA), disability leave, service connected disability leave or leave to accept a temporary, provisional, or emergency ~~or exempt~~ assignment in another class, an employee shall retain and accrue continuous service, provided an appropriate application to return is made pursuant to the requirements specified elsewhere in this Part.
- g) Limitation on Continuous Service: Temporary and emergency employees employed after May 24, 1977 shall not accumulate continuous service except as provided in the State Employee Vacation Time Act [5 ILCS 360]20 ILCS 805/240, unless the status is acquired as the result of taking a leave of absence to accept a temporary or emergency assignment.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.380 Employee Transfers**

- a) Transfers: A transfer is the assignment of an employee to a vacant position in the same class to which most recently appointed or to a position involving similar qualifications, duties, responsibilities and salary range. Transfers shall not be made without prior approval of the Director of Personnel.
- b) Geographical Transfer: Geographical transfer is the transfer of an employee from one geographical location in the State to another for the performance of duties

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other than temporary assignments or details for the convenience of the employer. Geographical transfers shall be made only with the approval of the Director of Personnel. An employee who refuses to accept a geographical transfer must report for duty at the new location but may make written appeal of the transfer to the Merit Commission within 15 days after the effective date of the transfer. An employee shall be reimbursed for all reasonable transportation and moving expenses incurred in moving to a new location because of permanent geographical transfer unless the transfer was applied for by the employee. Reasonable transportation and moving expenses shall be the lowest of 3 bids, unless the lowest bidder is not responsible or available. Notice of an approved management directed geographical transfer shall be served on the employee by the operating department in person or by certified mail, return receipt requested, at the employee's last address appearing in the official personnel file.

- c) Merit System Transfer: An employee of the State of Illinois who holds certified or probationary status in a merit system other than the Secretary of State Merit Employment Code, including employees under jurisdiction of the Personnel Code, the State Universities Civil Service Act, the State Treasurer Employment Code or the Comptroller Merit Employment Code, may be transferred to a position that is subject to Jurisdiction B of the Merit Employment Code. The Director of Personnel will verify that the positions ~~are~~ comparable by comparing the qualifications, duties, responsibilities and salary range of the current position to those of the new position prior to approval. The transferred employee shall retain the same status and shall be given credit for continuous service for uninterrupted service under the other merit systems.
- d) Rights of Transferred Employees: A transferred employee shall retain status, continuous service and all accrued benefits.
- e) Transfer of Duties: When the duties of a position are relocated by transfer or by abolition and reestablishment and when the duties are substantially the same, the incumbent employee may elect to relocate and retain the duties of the position.
- f) Limitation on Transfers: Temporary, emergency, exempt, trainee and provisional employees shall not be transferred.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.390 Demotion**

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- a) Definition:
- 1) Demotion is the assignment of an employee to a vacant position in a class having a lower maximum permissible salary or rate than the class from which the demotion was made for reasons of inability to perform the work of the class from which the demotion was made.
  - 2) Written statements of reason for demotion shall be filed by a department director or other administrative authority with the Director of Personnel or designee in the form and manner prescribed. The written statement shall be signed and shall contain sufficient facts to show good cause for the demotion. No demotion shall become effective without the prior approval of the Director of Personnel or designee.
- b) Notice to Employee: If the statement of reasons for demotion of a certified employee is approved by the Director of Personnel or designee, a copy of the approved statement of reasons for demotion shall be served on the employee in person or by certified mail, return receipt requested, at the employee's last address appearing in the official personnel file.
- c) Employee Obligations: Upon receipt by the employee of the approved statement of reasons for demotion or upon the effective date of the demotion, whichever is later, the employee shall leave the position to which assigned and report for duty to the position to which demoted. The report shall be without prejudice to right of appeal under subsection (e).
- d) Salary and Other Benefits of Employee: Upon receipt by the employee of the approved statement of reasons for demotion, or on the effective date of the [demotion statement](#), whichever is later, all salaries and benefits of the employee in the position in which assigned prior to receipt of the statement of reasons shall be adjusted to reflect the demotion.
- e) Appeal by Certified Employee: A certified employee who has been served with an approved statement of reasons for demotion may appeal to the Merit Commission, provided the appeal is made in writing within 15 days after receipt of the approved statement of reasons for demotion.
- f) Demotion of Other Employees: The Director of Personnel or designee may

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approve the demotion of probationary employees. Notice of such demotion shall be served on the employee by the Director of Personnel or designee in person, or by certified mail, return receipt requested, at the employee's last address appearing in the official personnel file.

- g) Status of Demoted Employees: A demoted certified employee shall be certified in the class to which demoted and shall not be required to serve a new probationary period. Subject to Section 420.360(a), a demoted probationary employee shall serve a new probationary period in the class to which he/she is demoted.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: CONDITIONS OF EMPLOYMENT

**Section 420.600 Grievance Procedure**

- a) ~~Grievance~~—Definition: Any employee of the Office of the Secretary of State may grieve as to the application of the Merit Employment Code, this Part or any policy arising under this Part as to the impact of the applications upon the employee's employment condition or status. The grievance must be filed on the form prescribed by the Director of Personnel.
- b1) ~~Grievance Procedure~~—Limitation: The Secretary of State Merit Employment Code, this Part and the official policy arising under this Part, the Pay Plan, and the Rules of the Merit Commission (80 Ill. Adm. Code 50) are not grievable matters. Terminations of noncertified employees, layoffs, charges seeking discharge, demotions, suspensions totaling more than 30 days in any 12 month period of certified employees, appeals of allocation of duties, or geographical transfers are not subject to the grievance procedure.
- c2) ~~Grievance Procedure~~—Abandonment – Extension: Failure of the grievant to comply with the form or time requirements of the grievance procedure shall result in forfeiture of the grievance, ending the grievance process. Failure of the employer to comply with the time requirements shall automatically advance the grievance to the next level. The parties may mutually extend the time limits at any level of the procedure, except in cases of hearings arising from demotion or discharge of a certified employee.

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d) Representation: Parties to a grievance may be represented by themselves or by a person of their own choosing at any level of the proceedings.

eb) Grievance Procedure – Level 1:

- 1) Employees who believe that they are aggrieved may within 5 scheduled work days of knowledge of the circumstance giving rise to the grievance, present their grievance in writing on the prescribed form to their immediate supervisor and it shall contain a specific statement as to the nature of the grievance. The supervisor shall attempt to adjust the problem, or, if he/she is without authority to do so, he/she shall advise the employee as to the appropriate beginning level for institution of their grievances.
- 2) Immediate supervisors who are authorized to resolve grievances shall note the receipt date of the grievances and shall make response within 10 working days.

fe) Grievance Procedure – Level 2:

- 1) If an employee does not accept the response of an appropriate supervisor at Level 1, the employee may present the grievance to the department director or designee. The grievance shall be submitted within 10 working days ~~after~~ the employee's official notification of the supervisor's decision at Level 1 and it shall contain a specific statement as to the nature of the grievance and as to the reason for rejecting the resolution of the immediate supervisor.
- 2) The department director or designee shall note the receipt date of the grievance and shall make written response within 10 working days. The written response shall be specific as to the reasons for approval or denial of the grievance. In making a decision, the department director or designee may make an investigation of the problem.

gd) Grievance Procedure – Level 3:

- 1) An aggrieved employee who does not accept the decision received at Level 2 may forward a written request on the prescribed form to the Director of Personnel. The request shall be filed within 10 working days

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~~after~~ the employee's receipt of the Level 2 decision and it shall be specific as to the reasons for rejection of that decision.

- 2) The Director of Personnel or designee, in his or her discretion, shall review the matter on its face or cause a meeting of the parties. Following the review, or upon receipt and review of the recommendation from the designee, the Director of Personnel shall release a decision to all of the parties. The decision shall be in writing and shall be final and binding upon the parties.

- 3) If a meeting is granted by the Director of Personnel under subsection (g)(2), the Director of Personnel or designee shall designate the location and time of grievance meetings and notify in writing all parties involved. The Director of Personnel or designee shall grant a continuance if either party demonstrates good cause. At the meeting, the parties to a grievance may introduce such materials, documents and witnesses as are necessary to resolve the problem. A list of all witnesses anticipated to be called and documents to be presented shall be submitted to the Director of Personnel 5 working days prior to the meeting. Necessary documents maintained by the Office of the Secretary of State shall be reproduced without cost. Witnesses who are employees of the Office of the Secretary of State shall not be docked for absence from work while testifying at a grievance meeting. Should a dispute arise as to the necessity of certain appearances or of the reproduction of certain documents, the Director of Personnel shall be advised and shall resolve the dispute.

- e) ~~Grievance Procedure—Representation: At Levels 1, 2 and 3, parties to a grievance may be represented by themselves or by a person of their own choosing.~~
- f) ~~Grievance Procedure—Witnesses and Evidence: The parties to a grievance may introduce such materials, documents and witnesses as are necessary to resolve the problem. A list of all witnesses anticipated to be called and documents to be presented shall be submitted to the Director of Personnel 5 working days prior to the meeting. Necessary documents maintained by the Office of the Secretary of State shall be reproduced without cost. Witnesses who are employees of the Office of the Secretary of State shall not be docked for absence from work while testifying at a grievance meeting. Should a dispute arise as to the necessity of certain appearances or of the reproduction of certain documents, the Director of~~

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~~Personnel shall be advised and shall resolve the dispute.~~

- g) ~~Grievance Procedure—Time and Place: At level 3, the Director of Personnel or designee shall designate the location and time of grievance meetings and notify in writing all parties involved. The Director of Personnel or designee shall grant a continuance if either party demonstrates good cause.~~

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.610 Sick Leave**

- a) Sick Leave Definition: ~~1) All employees, except those in emergency, permanent part-time, intermittent, per diem, or temporary status, unless that status is the result of accepting a nonpermanent working assignment in another class, shall accumulate sick leave at the rate of one day for each month's service. Intermittent and permanent part-time employees shall accrue sick time on a prorated hourly basis determined by a ratio, the numerator of which shall be number of hours in pay status each month and the denominator of which shall be the number of normal work hours that month.~~
- ~~2) Sick leave may be used for illness, disability or injury of the employee or appointments with doctor, dentist or other professional medical practitioner, and also may be used for not more than 30 days in one calendar year in the event of serious illness, disability, injury, or death of a member of the employee's immediate family, unless such time is used pursuant to the Family and Medical Leave Act (29 USC 2601 et seq.). The employing department or the Department of Personnel shall, when there is apparent abuse, require evidence to substantiate that such leave days were used for the purpose set forth in this subsection (a)(2). For periods of absence for more than 5 consecutive workdays, the employee shall provide verification for the absence in accordance with the provisions of Section 420.760(b)(4). Sick leave may not be used in increments of less than ½ hour.~~
- b) Accumulation of Sick Leave: Employees shall be allowed to carry over from year to year of continuous service any unused sick leave. An employee shall retain any unused sick leave accumulated prior to the effective date of this Section.
- c) Reinstatement of Sick Leave:

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- 1) On or after the effective date of this Section, accumulated sick leave available at the time an employee's continuous service is interrupted shall, upon verification, be reinstated to the employee's account upon return to full-time, regularly scheduled part-time, or intermittent employment, except in temporary or emergency status. This reinstatement is applicable provided the interruption of service occurred not more than 5 years prior to the date the employee reenters service and provided the sick leave has not been credited by the appropriate retirement system towards retirement benefits.
- 2) An employee with previous service for which sick leave was granted under provisions other than Jurisdiction C of the Secretary of State Merit Employment Code shall have that sick leave reinstated to the extent provided under this Section.
- d) Advancement of Sick Leave: An employee with more than 2 years continuous service whose personnel records warrant it may be advanced sick leave with pay for not more than 10 working days, with the written approval of the department and the Director of Personnel. Advances will be charged against sick leave accumulated later in subsequent service. No additional advance of sick time will be made until all previously advanced time is repaid.
- e) Use of Sick Leave: ~~Sick leave shall be used in the following order:~~
  - 1) ~~Sick leave shall be used in the following order: Sick leave granted prior to January 1, 1984 will be used first;~~
    - A) Sick leave granted prior to January 1, 1984 will be used first;
    - B) Sick leave granted beginning January 1, 1998 will be used second;
    - C) Sick Leave granted from January 1, 1984 through December 31, 1997 will be used last.
  - 2) Sick leave may not be used in increments of less than ½ hour at a time, but in conjunction with the first ½ hour may be taken in additional 15-minute increments. Permanent part-time and intermittent employees may use sick

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~~time in 15-minute increments. Sick leave granted beginning January 1, 1998 will be used second;~~

- 3) Sick leave may be used for illness, disability or injury of the employee or appointments with doctor, dentist or other professional medical practitioner, and also may be used for not more than 30 days in one calendar year in the event of serious illness, disability, injury, or death of a member of the employee's immediate family, unless such time is used pursuant to the Family Medical Leave Act (29 USC 2601 et seq.). Sick leave granted from January 1, 1984 through December 31, 1997 will be used last.
  - 4) The employing department or the Department of Personnel shall, when there is apparent abuse, require evidence to substantiate that sick leave days were used for the purposes set forth in subsection (e)(3). For periods of absence of more than 5 consecutive workdays, the employee shall provide verification for the absence in accordance with the provisions of Section 420.760(b)(4).
  - 5) Employees may be granted up to 3 days (a day being equal to his/her actual workday) of paid leave time, in addition to the use of sick time allowed in subsection (e)(3), to attend services and related events and make necessary arrangements upon the death of a member of his/her immediate family. For purposes of this subsection (e)(5), immediate family includes father/step-father, mother/step-mother, brother/step-brother, sister/step-sister, son/step-son, daughter/step-daughter, spouse, domestic partner, child (including adopted, custodial or in-law), grandparent, grandchild, parent-in-law, brother or sister-in-law, niece, nephew, aunt and uncle. The employee may be required to provide documentation as to the necessity for absences covered by this subsection (e)(5).
- f) Payment in Lieu of Sick Leave:
- 1) Unless otherwise provided by law, upon separation of employment by means of resignation, retirement, death, indeterminate layoff, or discharge, and if the employee is not employed in another position in State service within 4 calendar days of the separation, an employee is entitled to be paid for unused sick leave which accrued on or after January 1, 1984 and prior

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to January 1, 1998 in accordance with subsection (e)(3).

- 2) The amount of sick leave to be paid upon termination of employment will be determined as follows:
  - A) using time records from the employing department, the Department of Personnel will verify the employee's sick leave balance for sick leave earned, but not taken, in the period from January 1, 1984 up to and including December 31, 1997;
  - B) the employees will be paid one-half of the amount of sick leave days determined in subsection (e)(2)(A), multiplied by the daily salary rate in effect at the time of separation.
- 3) The method for computing the hourly or daily salary rate for sick leave qualifying for lump sum payment upon separation of employment shall be determined by Payroll.
- 4) If an employee has a negative sick leave balance pursuant to subsection (d) when employment is separated, the employing department must submit this negative sick leave balance to Payroll, where one of the following will be applied:
  - A) Subtract the negative sick leave balance from the earning amount still due to the employee by the Secretary of State.
  - B) Contact employing department, stating dollar amount of overpayment to employee. The employing department then has the responsibility of contacting the employee regarding the dollar amount due to the Secretary of State, payable by personal check or money order.
  - C) If no repayment occurs, Payroll will establish a lien against any State of Illinois monetary payment due to the employee through the Comptroller for the negative sick leave balance owed to the Secretary of State.
- 5) An employee who is reemployed, reinstated or recalled from indeterminate layoff and who received lump sum payment in lieu of

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unused sick days will have the days restored by doing the following:

- A) The employee must notify employing department, requesting that previously paid unused sick days are to be restored to the employee's sick leave account; and
  - B) The employee must repay the gross (total) amount paid by the State (before deductions) to the Secretary of State by personal check or money order. The employing department will forward the employee's repayment to Payroll before unused sick days are returned to the employee's sick leave account.
- g) Pursuant to the Secretary of State Merit Employment Code [15 ILCS 310/10b.18], an employee who is also a veteran shall be permitted 2 days with pay per year to visit a veterans hospital for examination of a military service connected disability. Upon submitting proof of the visit, the 2 days shall not be charged against any sick leave currently available to the employee.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.620 Personal Leave**

- a) All employees, except those in emergency, per diem or temporary status, shall be permitted 3 personal leave days with pay, each calendar year, ~~with pay. Personal leave days may be used for personal reasons but shall not be used to extend a holiday or annual leave except as permitted in advance by the department through written approval. Employees entitled to receive personal leave who enter service during the year shall be given credit for personal leave at the rate of 1/2 day for each 2 months service for the calendar year of hire. Intermittent or part time employees entitled to receive personal leave who enter the service during year shall be given prorated credit for the leave by calculating the employee's work schedule percentage using a 37.5 hour work week times the number of days that would be granted to a full-time employee, rounded to the nearest quarter hour. Personal leave may not be used in increments of less than 1/2 hour at a time. Except for those emergency situations that preclude the making of prior arrangements, personal leave shall be scheduled in advance.~~
- b) Partial Year Credit

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- 1) Employees entitled to receive personal leave who enter service during the calendar year shall be given credit for personal leave as follows: ~~Personal leave shall not accumulate from calendar year to calendar year, nor shall any employee be entitled to payment for unused personal leave upon separation from service, except as provided in Section 10c(2) of the Merit Employment Code.~~

<u>January 1 through February 14</u>	<u>3 days or 22.5 hours</u>
<u>February 15 through April 15</u>	<u>2½ days or 18.75 hours</u>
<u>April 16 through June 15</u>	<u>2 days or 15.0 hours</u>
<u>June 16 through August 15</u>	<u>1½ days or 11.25 hours</u>
<u>August 16 through October 15</u>	<u>1 day or 7.5 hours</u>
<u>October 16 through December 15</u>	<u>½ day or 3.75 hours</u>

- 2) Personal leave time will not be available for use or credited to the employee's account for 90 days from the date of appointment for employees who are commencing a new period of continuous service.
- c) Personal leave may not be used in increments of less than ½ hour at a time, but in conjunction with the first ½ hour may be taken in additional 15-minute increments. Permanent part-time and intermittent employees may use personal leave time in 15-minute increments.
- d) Except for those emergency situations that preclude the making of prior arrangements, personal leave shall be scheduled in advance. Personal leave days may be used for personal reasons but shall not be used to extend a holiday or annual leave except as permitted in advance by the department through written approval.
- e) Unless subsection (b) applies, personal leave shall not accumulate from calendar year to calendar year, nor shall any employee be entitled to payment for unused personal leave upon separation from service, except as provided in Section 10c(2) of the Code.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 420.640 Leaves of Absence Without Pay**

Unless otherwise provided for in a specific leave and with prior approval of the Director of

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Personnel, leaves of absence may be granted without pay to employees for periods not to exceed 6 months. Employees must provide proper documentation to support their request for leave prior to the approval of the leave. Leaves may be extended for good cause by the department for additional 6 month periods, with the Director of Personnel's approval. [An employee who returns from a leave granted under this Section shall have the rights set forth in Section 420.680.](#)

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.650 Limitations on Leaves of Absence**

No emergency or temporary employee shall be granted leaves of absence except as provided in Section 420.630 (on-the-job injury [or illness](#)) and Section 420.760(f) (disability).

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.660 Leaves of Absence – Special**

The Director of Personnel may approve special leaves of absence with or without pay when [those such](#) leaves would benefit the Office of the Secretary of State. [An employee who returns from a leave granted under this Section shall have the rights set forth in Section 420.680.](#)

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.700 Failure to Return from Leave of Absence**

Failure to return from a leave of absence, extend the leave or voluntarily terminate employment within 5 working days after the expiration or termination date shall be considered grounds for disciplinary action, up to and including discharge for job abandonment in accordance with Section 420.~~430~~~~400~~(f) [and \(j\)](#).

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.715 Disaster Services Leave with Pay**

In accordance with the Disaster Service Volunteer Leave Act [5 ILCS 335], a permanent employee who is a certified disaster service volunteer of the American Red Cross or assigned to the Illinois Emergency Management Agency in accordance with the Illinois Emergency Management Agency Act [20 ILCS 3305], the Emergency Management Assistance Compact Act [45 ILCS 151], or other applicable administrative rules, may be granted leave with pay for up to

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20 working days in any 12 month period for disasters in the United States or its territories. The leave may be granted upon request of the American Red Cross or the Illinois Emergency Management Agency. The leave is subject to the approval of the Director of Personnel based upon operational needs. Proper documentation to support the request for leave must be submitted prior to the approval of the leave. Disasters must be designated at a Level III or above in the American National Red Cross Regulations and Procedures. No temporary or emergency employees shall be granted this leave. [An employee who returns from a leave granted under this Section shall have the rights set forth in Section 420.680.](#)

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.720 Leave for Annual Military Reserve Training or Special Duty**

- a) Any employee who is a member of a reserve component of the Armed Services, the Illinois National Guard or the Illinois Naval Militia shall be allowed annual leave with pay for one full pay period during any one State fiscal year and such additions or extensions to fulfill the military reserve obligation. These leaves will be granted without loss of [continuous serviceseniority](#) or other accrued benefits.
- b) In the case of an emergency call-up (or order to State active duty) by the Governor, the leave shall be granted for the duration of the emergency with pay and without loss of seniority or other accrued benefit. Military earnings for the emergency call-up paid under the Military Code of Illinois [20 ILCS 1805] must be submitted and assigned to the employing department, and the employing department shall return it to the payroll fund from which the employee's payroll check was drawn. If military pay exceeds the employee's earnings for the period, the employing department shall return the difference to the employee.
- c) To be eligible for military reserve leave or emergency call-up pay, the employee must provide the employing department with a certificate, requiring the military reserve or emergency call-up duty, from the commanding officer of his/her unit prior to commencement of the duty.
- d) Any employee who is a member of any reserve component of the United States Armed Forces or of any reserve component of the Illinois State Militia shall be granted leave from State employment for any period actively spent in military service, including basic training and special or advanced training, whether or not within the State, and whether or not voluntary.

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- e) During basic training and up to 60 days of special or advanced training, if the employee's compensation for military activities is less than his/her compensation as a State employee, he/she shall receive his/her regular compensation as a State employee minus the amount of his/her base pay for military activities. During this training, the employee's continuous service~~seniority~~ and other benefits shall continue to accrue.
- f) An employee who returns from a leave granted under this Section shall have the rights set forth in Section 420.680.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 420.800 Vacation**

- a) Eligibility:
- 1) All employees in pay status shall earn vacation time. Employees in emergency or temporary status shall not earn vacation time unless on leave of absence to accept an emergency or temporary appointment.
  - 2) Eligible employees shall earn vacation time in accordance with the following schedule:
    - A) From the date of hire until the completion of 5 years of continuous service – 10 work days per year of employment.
    - B) From the completion of 5 years of continuous service until the completion of 9 years of continuous service – 15 work days per year of employment.
    - C) From the completion of 9 years of continuous service until the completion of 14 years of continuous service – 17 work days per year of employment.
    - D) From the completion of 14 years of continuous service until the completion of 19 years of continuous service – 20 work days per year of employment.
    - E) From the completion of 19 years of continuous service until the

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completion of 25 years of continuous service – 22 work days per year of employment.

F) From the completion of 25 years of continuous service until the completion of 30 years of continuous service – 25 work days per year of employment.

G) From the completion of 30 years of continuous service – 30 work days per year of employment.

3) Vacation time may not be taken in increments a minimal initial increment of less than one hour at a time, but, in, in conjunction with the first one hour increment, vacation time may be taken in additional 15 minute increments. Permanent part-time and intermittent employees may use vacation time in 15-minute increments. Earned vacation time may be taken any time after the initial 6 month probationary period and shall not be accumulated for more than 24 months after the end of the calendar year in which it is earned, except as provided by subsection (b)(2).

4) Vacation time earned, except by intermittent and permanent part-time employees, shall be computed in work hours. After an employee's earned vacation time has been so computed, if there remains a fractional balance, the earned vacation time will be rounded to the nearest quarter hour.

5) Prorated Vacation for Intermittent and Permanent Part-Time Employees: Intermittent and permanent part-time employees shall earn vacation in accordance with the schedule set forth in subsection (a)(2) on a prorated hourly basis determined by a ratio, the numerator of which shall be the hours in pay status each month and the denominator of which shall be the normal working hours for that month. Vacation computed on an hourly basis may be used in hourly increments.

6) Computation of vacation time of employees who have interrupted service qualifying for credit as defined in Section 420.340 shall be determined as though all previous service is continuous with present service.

b) Vacation Schedule and Loss of Earned Vacation:

1) In establishing vacation schedules, the department shall consider both the

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employee's preference and the operating needs of the department. In any event, upon request, vacation time must be scheduled so that it may be taken not later than 24 months after the expiration of the calendar year in which it was earned. If an employee does not request and take accrued vacation within the 24 month period, vacation earned during that calendar year will be lost unless the provisions of subsection (b)(2) apply.

- 2) If an employee is to lose earned vacation time in accordance with subsection (b)(1), and was unable to use that time due to operational needs, the vacation time scheduled for loss may be retained by the employee for up to 24 additional months if approved by the Personnel Director.
- c) Vacation Scheduling:
- 1) All eligible employees shall request the scheduling of vacation time at least 2 weeks in advance, or in accordance with the scheduling provisions established by their department director. Supervisors shall grant requested times unless a bona fide work-related reason exists for denial.
  - 2) When two or more employees simultaneously request the same vacation period and not all of them can be excused for the same period, the request of the employee with the greatest amount of continuous service shall be honored.
- d) Vacation – Unit Closing: The Department of Personnel may suspend the operation of any work unit or position, workload permitting, for the purpose of vacation.
- e) Vacation Benefits on Death of Employee:
- 1) Upon the death of an employee, the person or persons specified in Section 14a of the State Finance Act [30 ILCS 105/14a] shall be entitled to receive, from the appropriation for personal services available for payment of the employee's compensation, the sum for any accrued vacation period to which the employee was entitled at the time of death.
  - 2) The~~That~~ sum shall be computed by multiplying the employee's daily or ~~(hourly)~~ rate by the number of days or ~~(hours)~~ of accrued vacation due.

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- f) Payment in Lieu of Vacation:
- 1) Upon separation of employment by means of resignation, retirement, indeterminate layoff, or discharge, and if the employee is not employed in another position in State service within 4 calendar days ~~after~~ separation, an employee is entitled to be paid for any vacation earned but not taken or forfeited pursuant to subsection (b) or the Secretary of State Pay Plan. No other payment in lieu of vacation shall be made except as provided by subsection (e).
  - 2) The payment provided in subsection (f)(1) shall not be deemed to extend the effective date of separation by the number of days represented by the payment.
  - 3) The payment provided in subsection (f)(1) shall be computed by multiplying the number of hours of accumulated vacation by the employee's hourly rate or as determined with Section 420.330 (Intermittents).
  - 4) The payment provided in this Section shall not be allowed if the purpose of the separation from employment and any subsequent reemployment is for the purpose of obtaining such payment.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART E: GENERAL PROVISIONS

**Section 420.1015 Proration of Rights and Benefits**

Permanent part-time and intermittent employees shall have all rights and benefits granted by Jurisdictions A, B and C of the Code based on the proration of the part-time or intermittent scheduled hours against the normal 1957.5 hour work year.

(Source: Added at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED AMENDMENTS

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

<u>Section Numbers:</u>	<u>Adopted Action:</u>
365.110	Amendment
365.120	Amendment
365.130	Amendment
365.140	Amendment
365.220	Amendment
365.230	Amendment
365.240	Amendment
365.250	New Section
365.260	New Section
365.340	Amendment
365.410	Amendment
365.420	Amendment
365.430	Amendment
365.440	Amendment
365.450	Amendment
365.470	New Section
365.520	Amendment
365.530	Amendment
365.610	Amendment
365.620	Amendment
365.630	Amendment
365.820	Amendment
365.910	Amendment
365.920	Amendment
365.930	Amendment
365.940	Amendment
365.1010	Amendment
365.1020	Amendment
365.APPENDIX B EXHIBIT A	New Section
365.APPENDIX B EXHIBIT B	New Section
365.APPENDIX B EXHIBIT C	New Section

## ENVIRONMENTAL PROTECTION AGENCY

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- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act. [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Amendments: November 8, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any materials incorporated by reference, is on file in the Illinois Environmental Protection Agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: June 25, 2010; 34 Ill. Reg. 8130
- 10) Has JCAR issued a Statement of Objection to these Amendments? No
- 11) Differences between proposal and final version: Grammatical and punctuation changes were made as agreed upon with JCAR. In the first line of Section 365.250, deleted "To the extent there are sufficient eligible project applications.". In Section 365.250, added "This information will be added to this rule." at the end of the Agency Note. In Section 365.260, added "This information will be added to this rule." at the end of the Agency Note. In Section 365.470(c), added "by considering the status of the Fund, capitalization grant amounts, economic conditions and requirements established by USEPA.". Also, added "and will be added to this rule" in the Agency Note for this Section. Finally, a definition for "Facilities" was added to Section 365.130.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No. A companion emergency rulemaking expired on November 6, 2010.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: This rulemaking will allow the Agency to administer WPCLP in conjunction with the Capitalization Grant Agreement with USEPA. This rulemaking will allow the Agency to lower the existing WPCLP interest, provide for principal forgiveness, a more streamlined application process and to address green infrastructure projects.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF ADOPTED AMENDMENTS

- 16) Information and questions regarding these adopted amendments shall be directed

Stefanie Diers, Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19726  
Springfield, Illinois 62794-9276

217/782-5544

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

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF ADOPTED AMENDMENTS

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

PART 365  
PROCEDURES FOR ISSUING LOANS FROM THE WATER  
POLLUTION CONTROL LOAN PROGRAM

SUBPART A: INTRODUCTION

Section	
365.110	Purpose
365.120	Administration
365.130	Definitions
365.140	Incorporations by Reference

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

Section	
365.210	Involvement of USEPA in the Operation of the Fund (Repealed)
365.220	Uses of the Water Pollution Control Loan Program
365.230	Agency Responsibilities under Title VI of the CWA
365.240	Requirements for Loan Recipients under Title VI of the CWA
<u>365.250</u>	<u>Green Project Reserve</u>
<u>365.260</u>	<u>Principal Forgiveness</u>

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

Section	
365.310	Noncompliance with Loan Procedures
365.320	Stop-Work Order
365.330	Termination
365.340	Waiver of Procedures

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section

## ENVIRONMENTAL PROTECTION AGENCY

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365.410	Project Priority Determination
365.420	Pre-Applications for Financial Assistance and Identification of Projects to be Funded
365.430	Financial Assistance Application and Approval
365.440	Fixed Loan Rate
365.450	Refinancing
365.460	Limitation on Design Cost
<u>365.470</u>	<u>Limitation on Loan Assistance</u>

## SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS

## Section

365.510	Sewer System Evaluation and Rehabilitation (Repealed)
365.520	Loan Applicant's Responsibilities During Facilities Planning
365.530	State Environmental Review
365.540	Limitations on Awards for Individual Systems
365.550	Value Engineering Requirements (Repealed)
365.560	Areawide Waste Treatment Management Planning

## SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

## Section

365.610	Requirements for Subagreements
365.620	Construction Contracts
365.630	Contracts for Personal and Professional Services
365.640	Compliance with Procurement Requirements for Construction Contracts
365.650	Disputes
365.660	Indemnity
365.670	Covenant Against Contingent Fees

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

## Section

365.710	Construction Initiation
365.720	Project Changes
365.730	Construction Engineering
365.740	Operation and Maintenance of the Project
365.750	Final Inspection

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- 365.760 Project Performance Certification (Repealed)  
365.770 Project Performance Certification (Renumbered)

## SUBPART H: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING, AND RECORDS

## Section

- 365.810 Access  
365.820 Audit and Records  
365.830 Single Audit Act

## SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

## Section

- 365.910 Sewer Use Ordinance  
365.920 User Charges  
365.930 Financial Capability  
365.940 Dedicated Source of Revenue  
365.950 Floodplain Insurance

## SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

## Section

- 365.1010 Determination of Allowable Costs  
365.1020 Use of Loan Funds and Payment of Unallowable Costs  
365.1030 Disbursement of Loan Funds

SUBPART K: PROCEDURES FOR LOAN REPAYMENT  
AND DELINQUENT REPAYMENT

## Section

- 365.1110 Loan Repayment to the Agency  
365.1120 Delinquent Loan Repayments

## 365.APPENDIX A Executive Orders

- 365.EXHIBIT A Executive Order 11625 (Repealed)  
365.EXHIBIT B Executive Order 12138 (Repealed)  
365.EXHIBIT C Executive Order 12549  
365.EXHIBIT D Executive Order 11246

365.APPENDIX B Loan Application Documents

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<u><a href="#">365.EXHIBIT A</a></u>	<u><a href="#">Loan Application Form</a></u>
<u><a href="#">365.EXHIBIT B</a></u>	<u><a href="#">Program Financial Requirements</a></u>
<u><a href="#">365.EXHIBIT C</a></u>	<u><a href="#">Bid Certifications Form</a></u>

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

SOURCE: Adopted at 13 Ill. Reg. 7351, effective May 1, 1989; amended at 16 Ill. Reg. 15073, effective September 21, 1992; recodified at 19 Ill. Reg. 11450, effective August 11, 1995; amended at 20 Ill. Reg. 788, effective January 1, 1996; amended at 30 Ill. Reg. 15590, effective September 18, 2006; emergency amendment at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 15450, effective October 28, 2009; emergency amendment at 34 Ill. Reg. 8325, effective June 10, 2010, for a maximum of 150 days; emergency expired November 6, 2010; amended at 34 Ill. Reg. 17582, effective November 8, 2010.

## SUBPART A: INTRODUCTION

**Section 365.110 Purpose**

- a) The Water Quality Act of 1987 (the 1987 Amendments) which amended the federal Water Pollution Control Act (33 USC 1251 et seq.) sets forth a schedule and mechanism for the transition from the federal level to the State and local level for responsibility of funding wastewater treatment facilities. Title VI of the 1987 Amendments creates a new authority that authorizes the United States Environmental Protection Agency (USEPA) to make grants to states to capitalize State water pollution control revolving funds. Title VI also establishes specific requirements for states for the development and operation of the State loan programs, some of which must be assumed by the [loan recipient](#)~~local government unit as the recipient of a loan.~~
- b) This Part 365 sets forth procedures to be used by the Illinois Environmental Protection Agency to operate the Water Pollution Control Loan Program (WPCLP), including the issuance of loans for the construction of wastewater treatment works as authorized by P.A. 85-1135, effective September 1, 1988 and amended by P.A. 90-121, effective July 17, 1997 [and the use of additional subsidization terms, including forgiveness of principal, negative interest rates, and grants to eligible applicants for the construction of wastewater facilities and other facilities that meet the federal green project reserve requirement.](#)

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(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.120 Administration**

- a) The WPCLP, an interest-bearing special fund, will be administered by the Agency as an instrumentality of the State of Illinois in accordance with the Operating and Capitalization Grant Agreements between the Agency and the USEPA in accordance with State and federal laws.
- b) Copies of forms that are required and sample language that can be used to satisfy the requirements of a WPCLP loan application can be obtained from the Illinois Environmental Protection Agency, Infrastructure Financial Assistance Section, 1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276 and is also available at the Agency's website at <http://www.epa.state.il.us/water/forms.html#financial-assistance>.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.130 Definitions**

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted under that Act (35 Ill. Adm. Code: Subtitle C) and the Clean Water Act (CWA), as amended (33 USC 1251 et seq.).
- b) For the purposes of this Part 365, the following definitions apply:

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

Agency – Illinois Environmental Protection Agency.

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

Binding Commitment – A legal obligation between the Agency and the loan recipient ~~local government unit~~ to provide financial assistance from the WPCLP to the loan recipient ~~that local government unit~~, specifying the

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terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

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

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

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

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

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

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

Contract Documents – The contract, including but not limited to advertisement for bids, information for bidders, bid, bid bond, agreement, payment bond, performance bond, notice of award, notice to proceed,

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change order, drawings, specifications, and addenda.

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

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

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

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

Director – Director of the Illinois Environmental Protection Agency.

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

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

Facilities – Equipment or operating systems that are constructed, installed

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or established to serve the particular purpose of mitigating the impacts of sewerage, industrial waste or non-point sources of pollution in a watershed. Facilities may involve stand-alone projects or be involved as component pieces of wastewater treatment works. Facilities in the context of the Green Project Reserve will address green infrastructure, water and energy efficiency improvements and other environmentally innovative activities.

Fixed Loan Rate – The fixed loan rate shall be 1.25% for loans issued from funds provided under the WPCLP in federal fiscal years 2010 and 2011, extending through and including September 30, 2011. Thereafter, the fixed loan rate shall be determined on an annual basis by the procedures defined in Section 365.440 (Fixed Loan Rate) of this Part. ~~One-half the market interest rate but not less than 2.50%.~~

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

Green Infrastructure – Includes a wide array of practices at multiple scales that manage and treat stormwater and that maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduces overall imperviousness in a watershed. On a local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

Green Project Reserve – The particular portion of a Capitalization Grant Agreement that is required to be set-aside or reserved, and that shall be used by the State for projects that address green infrastructure, water and energy efficiency improvements, and other environmentally innovative activities as directed by federal law.

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

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

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

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

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

Interest Rate – Not less than one ~~half~~<sup>fourth</sup> of the ~~Fixed Loan Rate~~<sup>market interest</sup> rounded to the nearest .01%.

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

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

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

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

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

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

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

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

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

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

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

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

Responsible Bid – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract

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documents. Information required to demonstrate responsibility may be corrected or submitted after bid opening.

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

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

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

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

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

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

**USEPA** – The United States Environmental Protection Agency.

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

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

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.140 Incorporations by Reference**

a) The following publications are incorporated by reference:

- ~~1)~~ ~~American Institute of Certified Public Accountants Professional Standards (1996), 666 Fifth Avenue, New York, New York 10019.~~
- ~~12)~~ Operation of Wastewater Treatment Plants (1980), 2<sup>nd</sup> edition (three volumes) (California State University, [Office of Water Programs, 6000 J Street, Sacramento CA 95819-6025](#)).
- ~~23)~~ Operation and Maintenance of Wastewater Collection Systems (1983), 1<sup>st</sup> edition (California State University, [Office of Water Programs, 6000 J Street, Sacramento CA 95819-6025](#)).

b) This Part 365 incorporates no later amendments or editions.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

SUBPART B: FEDERAL REQUIREMENTS FOR THE  
WATER POLLUTION CONTROL LOAN PROGRAM**Section 365.220 Uses of the Water Pollution Control Loan Program**

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

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

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

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*subdivision or instrumentality thereof, if the proceeds of such bonds will be deposited in the Fund;*

- j) *To finance the reasonable costs incurred by the Agency in the administration of the Fund; and*
- k) *To transfer funds to the Public Water Supply Loan Program. [415 ILCS 5/19.3(b)]*

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.230 Agency Responsibilities under Title VI of the CWA**

- a) The WPCLP shall be established in accordance with the requirements of Title VI prior to the receipt of the capitalization grant for deposit into the WPCLP.
- b) The Agency will prepare an Intended Use Plan and negotiate an Operating Agreement with the USEPA ~~that which~~ will be the basis for the Capitalization Grant Agreement. These documents establish the procedures, activities, and assurances for operation of the WPCLP including, but not limited to, the following:
  - 1) Grant payments will be accepted in accordance with a payment schedule established jointly by the Agency and the USEPA;
  - 2) In satisfaction of the requirements of the Capitalization Grant Agreement, A 20% State match will be deposited into the WPCLP according to an agreed upon schedule;
  - 3) A listing and description of projects on the Project Priority List to be provided financial assistance and the terms of the financial assistance;
  - 4) Binding commitments for ~~120 percent of~~ each quarterly federal grant payment ~~shall~~must be made by the Agency within one year after the receipt of each payment in satisfaction of the requirements of the Capitalization Grant Agreement;
  - 5) Funds as a result of the Capitalization Grants must first be used to assure maintenance of progress toward compliance with the enforceable

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deadlines, goals and requirements of the CWA and Capitalization Grant Agreement;

- 6) Loan award and disbursement procedures to document the loan recipient's compliance with Title VI requirements;
- 7) The loan repayment period cannot exceed 20 years beyond the earlier of the initiation of operation date or the initiation of the loan repayment period;
- 8) All repayments of loan principal and interest shall be deposited into the WPCLP;
- 9) Annual reporting to the USEPA on the Agency's progress toward meeting its goals and objectives; and
- 10) An annual audit of the WPCLP in accordance with the auditing procedures of the General Accounting Office (75 USC 31).

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

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

- a) Only local government units will be eligible for loans for wastewater treatment works projects or facilities that meet the requirements of the federal Green Project Reserve.
- b) Loan projects must be on the Project Priority List.
- c) Loan projects must be consistent with any plans developed under sections 205(j), 208, 303(e), and 319 of the CWA.
- d) A dedicated source of revenue, sufficient to pay principal and interest when due, must be enacted and pledged by the loan recipient for repayment of the loan.
- e) Loan projects must meet disadvantaged business enterprise requirements in accordance with 40 CFR 33.
- f) Loan projects must meet the applicable requirements of any other federal laws

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and authorities.

- g) Loans will be made at or below market interest rates.
- h) Loan accounts related to the project construction and the dedicated source of revenue will be maintained by the loan recipient in accordance with Generally Accepted Accounting Principles, consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- i) Loans will be fully amortized not later than 20 years after the earlier of the initiation of operation date or the initiation of the loan repayment period.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.250 Green Project Reserve**

Amounts required by the terms of the Capitalization Grant Agreement shall be for projects to address green infrastructure, water and energy efficiency improvements and environmentally innovative activities.

AGENCY NOTE: Loan applicants and other interested parties may obtain additional information on current Green Project Reserve amounts and guidance by accessing the Agency's website at: <http://www.epa.state.il.us/water/financial-assistance> or by telephone at 217/782-2027. This information will be added to this rule.

(Source: Added at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.260 Principal Forgiveness**

All financial assistance from the WPCLP shall be in the form of low interest loans, with principal forgiveness terms used and applied as necessary to meet specific requirements of the federal Capitalization Grant Agreement. The availability, amounts, limitations and method of distribution for any principal forgiveness of the loan amount shall be determined by the Director of the Agency based upon USEPA requirements and the terms of the Capitalization Grant Agreement, economic conditions, status of the Fund and other relevant criteria.

AGENCY NOTE: Loan applicants and other interested parties may obtain additional information on current principal forgiveness terms by accessing the Agency's website at:

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[http://www.epa.state.il.us/water/financial-assistance or by telephone at 217/782-2027](http://www.epa.state.il.us/water/financial-assistance%20or%20by%20telephone%20at%20217/782-2027). [This information will be added to this rule.](#)

(Source: Added at 34 Ill. Reg. 17582, effective November 8, 2010)

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE TO  
COMPLY WITH LOAN PROCEDURES**Section 365.340 Waiver of Procedures**

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

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of this Part

- 9) Section 365.620(d)(5) (Debarment and Suspension Certification) of this Part
  - 10) Section 365.630(a)(1) (Disadvantaged Business Enterprise Requirements) of this Part
  - 11) Section 365.630(a)(4) (Debarment and Suspension Certification) of this Part
  - 12) Section 365.750 (Operation and Maintenance of the Project) of this Part
  - 13) Section 365.910 (Sewer Use Ordinance) of this Part
  - 14) Section 365.920 (User Charges) of this Part
  - 15) Section 365.940 (Dedicated Source of Revenue) of this Part
- c) Notwithstanding subsection (b)(14), Section 365.920(b)(1) of this Part can be waived for loans issued between October 1, 1994 and October 1, 2006.
- d) Notwithstanding subsections (b)(6), (b)(12), (b)(13) and (b)(14), Sections 365.560, 365.750, 365.910 and 365.920 of this Part can be waived for projects that fulfill federal State Revolving Fund grant requirements for the green project reserve.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

## SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

**Section 365.410 Project Priority Determination**

- a) Financial assistance from the WPCLP will be provided **only to local government units** for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 366.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 366 after the receipt by the Agency of both loan pre-applications pursuant to Section

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365.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved Facilities Planning pursuant to Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) and Section 365.530 (State Environmental Review) of this Part. For projects represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.

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

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.420 Pre-Applications for Financial Assistance and Identification of Projects to**

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**be Funded**

- a) Every loan applicant shall submit to the Agency a signed and dated pre-application that includes at a minimum the following items:
  - 1) Legal name of applicant;
  - 2) Address;
  - 3) Authorized representative – name and title;
  - 4) Project classification (35 Ill. Adm. Code 366);
  - 5) Project description;
  - 6) Discharge location point;
  - 7) Cost estimate; and
  - 8) Project schedule.
- b) Loan applicants seeking financial assistance, during any federal fiscal year commencing October 1, must file a new pre-application annually by the preceding March 31 to qualify for possible inclusion in the Intended Use Plan.
- c) A project with approved facility planning may be added to the Project Priority List at any time by the submission of a pre-application.
- d) The Agency shall publish a list of the projects ~~that which~~ are proposed for funding ~~during the next federal fiscal year~~. These projects will be included in the Intended Use Plan.
- e) After January 1 of each year, the Agency may bypass projects on the Intended Use Plan that cannot meet the schedule to initiate construction by March 31 of that year. The Agency will evaluate projects in priority order and may offer loan commitments to other projects on the Project Priority List in accordance with Section 365.430 (Financial Assistance Application and Approval) of this Subpart.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

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**Section 365.430 Financial Assistance Application and Approval**

- a) In order to issue a loan commitment letter, the Agency must have received the following documents:
- 1) A completed Loan Application Form for financial assistance (Appendix B, Exhibit A), which will necessarily include the following certifications and authorizations with regard to the proposed project:
    - A) Loan Program Certifications;
    - B) Certification Regarding Debarment, Suspension and Other Responsibility Matters;
    - C) Certification of Intent Regarding National Flood Insurance;
    - D) Certification Regarding Project Site, Rights-of-Way, Easements and Permits; and
    - E) Authorization of a Representative to Sign Loan Documents;
  - 2) An approved facilities plan in accordance with Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Part;
  - 3) A completed Financial Information Checklist (Appendix B, Exhibit B), which will necessarily address the following requirements:
    - A) An enacted ordinance authorizing the bonds, notes or other evidence of indebtedness to be delivered to the Agency;
    - B) Proof of publication of the ordinance and any notice required by State statute, when applicable;
    - C) When applicable, an approved sewer use ordinance and user charge system in accordance with Sections 365.910 (Sewer Use Ordinance) and 365.920 (User Charges) of this Part;

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- D) Documentation to support the loan applicant's ability to repay the loan in accordance with Sections 365.930 (Financial Capability) and 365.940 (Dedicated Source of Revenue) of this Part;
- E) A legal opinion from the loan applicant's legal counsel with respect to the validity and enforceability of the loan applicant's obligations and the absence of conflicts with other agreements, bonds or ordinances; and
- F) A Tax Exemption Certificate and Agreement;

AGENCY NOTE: Guidance for loan applicants on the satisfaction of financial requirements detailed in subsections (a)(3)(A) through (F) is provided in Appendix B, Exhibit B.

- 4) Design documents, including plans and specifications, with a construction permit or "authorization to construct" from the Agency, pursuant to the provisions of 35 Ill. Adm. Code 309.154 and 309.202, whichever is applicable;
  - 5) A project completion schedule;
  - 6) When necessary, an executed inter-governmental agreement necessary for project implementation;
  - 7) An executed contract for design and construction related work in accordance with Section 365.630 (Contracts for Personal and Professional Services) of this Part if financing is being requested for these specific costs;
  - 8) An EPA Form 4700-4, Compliance Report; and
  - 9) Any other executed legal agreements necessary for project implementation.
- b) In addition to the items identified in subsection (a), the Agency must have received a completed Bid Certifications Form (Appendix B, Exhibit C) and all other relevant attachments before it will issue the Loan Agreement. Key elements of the bid package that are required by the Bid Certifications Form include the

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following items:

- 1) A certified copy of the published bid advertisement or advertisements;
- 2) The bid tabulations and selected bidder's proposal, along with a summary of any addenda issued by the loan applicant, if applicable;
- 3) An analysis of the bids and recommendations for the award of the bids;
- 4) The notice of the applicant's intent to award;
- 5) A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33; and
- 6) Certification from the loan applicant that all other bid requirements have been satisfied, including bid bond requirements, certifications and other legal documents required by State and federal law.

AGENCY NOTE: Guidance for loan applicants on the satisfaction of disadvantaged business enterprise requirements detailed in subsection (b)(5) can be found on the Agency's website at:  
<http://www.epa.state.il.us/water/forms.html#financial-assistance>.

- a) ~~In order to issue a loan commitment letter that reserves loan funds to a loan applicant for a maximum period of 90 days, the Agency must have received the following documents:~~
  - 1) ~~A completed loan application form for financial assistance providing, at a minimum, the following items:~~
    - A) ~~Legal name of applicant;~~
    - B) ~~Address;~~
    - C) ~~Authorized representative – name and title;~~
    - D) ~~Cost estimate;~~

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- E) ~~Amount requested for loan; and~~
- F) ~~Verification and signature;~~
- 2) ~~An approved facilities plan in accordance with Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Part;~~
- 3) ~~A Loan Program Certifications form that includes, at a minimum, the following:~~
  - A) ~~The loan applicant must agree to pay all project costs not covered by the loan;~~
  - B) ~~The loan applicant must certify that it has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project;~~
  - C) ~~The loan applicant must certify that no unlawful or corrupt practice has taken place in the planning or design of the proposed project;~~
  - D) ~~The loan applicant must certify that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project;~~
  - E) ~~The loan applicant must certify that it is not barred from being awarded a contract or subcontract under the Illinois Procurement Code [30 ILCS 500]; and~~
  - F) ~~The loan applicant must provide its correct Federal Employer Identification Number and certify that it is doing business as a governmental entity;~~
- 4) ~~An executed inter-governmental agreement necessary for project implementation, where necessary;~~
- 5) ~~A "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with~~

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~~federal Executive Order 12549 (Appendix A, Exhibit C);~~

- ~~6) A resolution, ordinance or legal document authorizing a representative of the loan applicant to sign loan application documents;~~
- ~~7) A certification that the necessary project site, rights of way, easements and permits for construction of the project have been obtained and certification of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601);~~
- ~~8) A resolution of intent to comply with the National Flood Insurance Act of 1968 (42 USC 4001-4127) in accordance with Section 365.950 (Floodplain Insurance) of this Part;~~
- ~~9) An approved sewer use ordinance and user charge system in accordance with Sections 365.910 (Sewer Use Ordinance) and 365.920 (User Charges) of this Part;~~
- ~~10) Documentation to support the loan applicant's ability to repay the loan in accordance with Sections 365.930 (Financial Capability) and 365.940 (Dedicated Source of Revenue) of this Part;~~
- ~~11) The construction drawings and specifications, suitable for bidding purposes;~~
- ~~12) A construction permit application and permit or "authorization to construct" from the Agency, pursuant to the provisions of 35 Ill. Adm. Code 309.154 and 309.202, whichever is applicable;~~
- ~~13) A project completion schedule;~~
- ~~14) An executed contract for design and construction related work in accordance with Section 365.630 (Contracts for Personal and Professional Services) of this Part;~~
- ~~15) An EPA Form 4700-4, Compliance Report;~~
- ~~16) An enacted ordinance authorizing the bonds, notes or other evidence of indebtedness to be delivered to the Agency;~~

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- 17) ~~Proof of publication of the ordinance and any notice required by State statute, where applicable;~~
  - 18) ~~A legal opinion from the loan applicant's legal counsel with respect to the validity and enforceability of the loan applicant's obligations and the absence of conflicts with other agreements, bonds or ordinances;~~
  - 19) ~~Tax Exemption Certificate and Agreement; and~~
  - 20) ~~Any other executed legal agreements necessary for project implementation.~~
- b) In addition to the items identified in subsection (a), the Agency must have received the following items before it will issue the actual Loan Agreement:
- 1) ~~A certified copy of the published bid advertisement or advertisements;~~
  - 2) ~~Any addenda issued by the loan applicant, if applicable;~~
  - 3) ~~The bidder's bid bond or cashier's check for not less than 5% of the total bid;~~
  - 4) ~~The low bidder's certificate of nonsegregated facilities showing compliance with 18 USC 1001;~~
  - 5) ~~A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33;~~
  - 6) ~~The submittal of bid tabulations;~~
  - 7) ~~An analysis of the bids and recommendations for the award of the bids;~~
  - 8) ~~A copy of the successful bid proposals;~~
  - 9) ~~The notice of the applicant's intent to award;~~
  - 10) ~~A "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with~~

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~~federal Executive Order 12549 (Appendix A, Exhibit C) is required from the prime contractor and the engineer; and~~

- 11) ~~A Certification showing compliance with Section 33E-11 of the Illinois Criminal Code of 1961 [720 ILCS 5/33E-11].~~

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.440 Fixed Loan Rate**

- a) The fixed loan rate is comprised of an interest rate and a loan support rate. The fixed loan rate charged for a WPCLP wastewater treatment works loan shall be a simple annual rate at one-half the market interest rate, ~~but not less than 2.50%.~~
- b) Notwithstanding subsection (a), for federal fiscal years 2010 and 2011 extending through and including September 30, 2011, the fixed loan rate charged for all loans from the WPCLP shall be a simple annual rate of 1.25%.
- b) ~~Notwithstanding subsection (a), for the period of time that funds from the ARRA are available for loan commitment, the fixed loan rate charged for all loans from the WPCLP shall be a simple annual rate of 0.00%.~~

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.450 Refinancing**

- a) Design costs, as set forth in Section 365.460 (Limitation on Design Cost) of this Subpart, and bidding costs related to eligible construction contracts incurred prior to the award of the loan agreement are eligible for refinancing.
- b) Costs under a construction contract executed prior to the award of the loan agreement shall be eligible for refinancing only when the following conditions apply:
- 1) The project meets the definition of a compliance project in accordance with Section 365.130 (Definitions) of this Part;
  - 2) The compliance project costs were incurred and construction was initiated after March 7, 1985; and

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- 3) The loan applicant has received written approval from the Agency prior to the award of the construction contract.

- c) Project costs refinanced shall receive the terms and interest rate available for the federal fiscal year that the loan agreement is issued.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.470 Limitation on Loan Assistance**

- a) For each of federal fiscal years 2010 and 2011 extending through and including September 30, 2011, the amount of financial assistance from the WPCLP to a loan applicant cannot exceed total eligible project costs or \$20,000,000, whichever is less. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.
- b) Notwithstanding subsection (a), for each of federal fiscal years 2010 and 2011 extending through and including September 30, 2011, the amount of financial assistance from the WPCLP to the Metropolitan Water Reclamation District of Greater Chicago cannot exceed total eligible project costs or \$100,000,000, whichever is less. Loans for multiple projects will be limited by the aggregate amount of those projects in relation to these limitations.
- c) For federal fiscal years 2012 and beyond, the Director of the Agency shall establish the annual limitations on loan assistance prior to the beginning of each federal fiscal year by considering the status of the Fund, capitalization grant amounts, economic conditions and requirements established by USEPA.

AGENCY NOTE: Loan applicants and other interested parties will be provided access to the Director's draft decision, which will be provided on the Agency's website followed by a public hearing with a comment period before a final decision is rendered. The information will be provided at <http://www.epa.state.il.us/water/financial-assistance> or by telephone at 217/782-2027 and will be added to this rule.

(Source: Added at 34 Ill. Reg. 17582, effective November 8, 2010)

SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS

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**Section 365.520 Loan Applicant's Responsibilities During Facilities Planning**

- a) The loan applicant shall provide facilities planning, which shall consist of plans and studies that are directly related to the construction of wastewater treatment works and/or other facilities that fulfill federal State Revolving Fund grant requirements for the green project reserve, to maintain compliance with applicable State and federal requirements as specified in 35 Ill. Adm. Code: Subtitle C and the CWA, while recognizing social, environmental, and economic conditions. The planning shall provide documentation on the need for the facilities for which loan assistance is being requested.
- a) ~~The loan applicant shall:~~
- 1) ~~Undertake and complete facilities planning, which shall consist of plans and studies that are directly related to the construction of wastewater treatment works, to maintain compliance with applicable State and federal requirements as specified in 35 Ill. Adm. Code: Subtitle C and the CWA;~~
  - 2) ~~Demonstrate to the Agency through such plans and studies the need for the facilities for which loan assistance is being requested; and~~
  - 3) ~~Demonstrate by a systematic evaluation of feasible alternatives that the proposed facilities represent the cost-effective means of meeting all applicable effluent limitations and water quality standards and goals, recognizing environmental and social conditions as set forth in subsections (b)-(e).~~
- b) If any information required to be furnished as part of a facilities plan has been developed separately, it shall be furnished and incorporated by reference in the facilities plan. Planning previously or collaterally accomplished under local, State or federal programs may be utilized to the extent applicable.
- c) The facilities plan shall be submitted to the Agency for approval. Where applicable, the applicant shall also submit drafts of any inter-governmental agreements or demonstrations of legal authority necessary to plan implementation.
- d) The facilities plan may include more than one construction project and provide the basis for several subsequent construction projects. A facilities plan that which

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has served as the basis for providing a loan for a construction project shall be reviewed prior to providing any loan for a subsequent project involving construction to determine if changes have occurred ~~that which~~ require amendments to the facilities plan. If substantial changes have occurred ~~that which~~ warrant revision or amendment as specified in Section 365.530 of this Subpart, the plan shall be revised or amended and resubmitted for review and approval in accordance with the provisions of Section 365.530(a) and (b) of this Subpart.

- e) Facilities planning shall include the following elements in sufficient detail to, at minimum, comply with all applicable construction permit supporting data requirements of 35 Ill. Adm. Code 370.210:
- 1) A complete description of the selected ~~wastewater~~ complete waste treatment system or other systems ~~of which the proposed wastewater treatment works is a part~~, identification of any existing violations of federal or State wastewater regulations and identification of the needs to be addressed by the proposed project.
  - 2) A discussion of the technical, financial, managerial, and environmental considerations that form the basis for the applicant's selection of the ~~recommended project~~ most effective project from the range of alternatives available and considered, including an evaluation regarding the elimination of infiltration and inflow where applicable. When appropriate to the project scope, the following issues shall be addressed:
    - A) The relationship of the nature, size and capacity of the ~~selected~~ each alternative to the needs to be served, including reserve capacity;
    - B) Identification of current and proposed effluent discharge limitations and water quality standards for the proposed wastewater treatment works or facilities, as required by Title IV of the CWA and 35 Ill. Adm. Code: Subtitle C;
    - C) A discussion of the operational requirements for the selected ~~of~~ each alternative and provisions for the ultimate disposal of sludge materials from the wastewater treatment process;

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- ~~D)~~ ~~An assessment of the capability of each alternative to maintain compliance with applicable laws and regulations;~~
- ~~DE)~~ An inventory of the relative environmental impacts of the selected each alternative and a discussion of the measures that would be required during design and construction to mitigate or minimize negative environmental impacts; and
- ~~EF)~~ Adequate basis of design information for the selected each alternative to confirm the reasonability of cost estimates; ;
- ~~G)~~ ~~A comparison of costs for each alternative, including both capital and operational costs over a 20-year planning period.~~
- 3) A detailed description of the alternative selected for loan assistance, including preliminary engineering data, complete cost estimates for design and construction building, one or more 8.5 by 11 inch site map or maps locating areas of construction and/or indirect impacts, and a projected schedule for completion. The engineering data shall include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit capacities, etc., sufficient to demonstrate that the project proposed will be designed in accordance with 35 Ill. Adm. Code 370.
- 4) Any required comments or approvals from relevant federal, State, interstate, regional or local agencies, including, at a minimum, comments from the Illinois Historic Preservation Agency and the Illinois Department of Natural Resources. Evidence of consultation with relevant federal, State, interstate, regional or local agencies, with documentation of project approval where required.
- 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for the operation and maintenance of the project wastewater treatment system and repayment of the proposed loan amount, as well as the impact of these costs on the system users.
- 6) Information sufficient to support a determination as to whether the project may qualify as water efficiency, energy efficiency, green infrastructure or environmental innovation.

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(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.530 State Environmental Review**

- a) Prior to making a final determination on the acceptability of any facilities plan, the Agency shall undertake an environmental review. The Agency may categorically exclude certain classes of projects from a detailed environmental review and public hearing requirement when, by virtue of their limited scope, the projects have no potential for negative environmental impacts.
- b) The Agency shall not begin its environmental review until it has determined that the facilities plan conforms to the requirements of Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Subpart, and that, based on the information available, all reasonable measures have been taken in the planning to avoid and mitigate negative environmental impacts.
- c) The scope of the Agency's environmental review shall include, but not be limited to, an assessment of the impacts of both the loan funded project and the overall planning on rare and endangered species, historic and cultural resources, prime agricultural land, air and water quality, recreational areas, wetlands, floodplains and other sensitive environmental areas. The review shall also assess the direct and indirect impacts of construction.
- d) For all projects requiring an environmental review, the Agency will assess the environmental impacts of the proposed project and prepare a written Preliminary Environmental Impacts Determination (PEID). The public will be given an opportunity to comment on the facilities plan and the Agency's environmental impacts assessment.
- e) The PEID shall be mailed to the loan applicant and other interested parties, inviting public comment. The loan applicant shall hold a public hearing on the plan and the Agency's PEID for the purpose of obtaining public comment. The public hearing ~~shall~~ be held within 60 days after receipt of the Agency's PEID or within an alternate time period that is justified by the loan applicant and approved by the Agency. The loan applicant shall allow an additional ~~10~~ days from the date of the public hearing for the submission of written comments from the public.
- f) The time and place of the public hearing shall be conspicuously and adequately

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announced at least 10 days before the hearing. In addition, the Agency's PEID document shall be displayed at a convenient local site sufficiently prior to the hearing to obtain a level of public participation appropriate to the scope and impacts of the proposed project.

- ~~g)~~ ~~The loan applicant shall provide written notice of the public hearing to interested local, State and federal agencies, State and regional clearinghouses, citizen groups and local public officials.~~
- ~~g)h)~~ The loan applicant shall provide the Agency with an accurate summary of all public comments received, together with any proposed amendments to the plan made in response to these comments.
- ~~h)i)~~ Upon receipt of this public hearing summary and after the expiration of the ~~1015~~ day written comment period, the Agency shall issue:
- 1) An unconditional approval of the plan (original or as amended); or
  - 2) A conditional approval of the plan with special conditions; or
  - 3) A disapproval of the plan based on evidence of significant negative environmental impacts for which appropriate mitigative measures have not been identified; or
  - 4) A determination of the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (42 USC 4332). The Agency may change its disapproval to approval or conditional approval based on the recommendations of the EIS.
- ~~i)j)~~ For projects categorically excluded from the environmental review process, the Agency shall provide to the applicant a Notice of Intent to Issue a Categorical Exclusion. The applicant shall publish the Agency Notice of Intent in the newspaper of local record, and provide public access to the planning documents and the Agency Notice of Intent and allow for 10 days for written public comment.~~conspicuously and adequately announce the Notice of Intent to Issue a Categorical Exclusion, provide public access to the planning documents and Agency Notice of Intent, and allow 15 days for public comment.~~ If no valid objection is raised to the Categorical Exclusion, the Agency shall issue an unconditional approval of the facilities plan. Should valid concerns be raised over

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potential environmental impacts, the Agency shall proceed with an environmental review under this Section 365.530 or issue a conditional approval where the applicant incorporates mitigative measures that would clearly resolve the environmental concerns.

- ~~j)k)~~ Agency approval of a facilities plan shall be valid for purposes of loan funding for a period of ~~5~~five years, after which time the plan must be updated and resubmitted to the Agency for review and approval. The Agency shall prepare a revised environmental review and provide an opportunity for public comment.
- ~~k)h)~~ At any time within 5 years from the date of facilities plan approval, the Agency may rescind its approval and require the planning to be amended, if there are changes to the scope of proposed construction or significant alterations to planning area conditions or underlying assumptions that might alter previous conclusions regarding environmental impacts or ~~cost analyses~~cost effectiveness. For projects where the amended planning would result in substantial changes in environmental or economic impacts, the Agency may require the applicant to provide an opportunity for public comment prior to granting approval of the amended plan.
- ~~l)m)~~ Additions to the project scope or changes to the location of proposed construction activity shall require an amendment to an approved facilities plan. Where the Agency determines that the proposed changes will not alter the previous environmental impacts findings, it will approve planning amendments by letter. In other cases, additional environmental review and public comment may be required.
- ~~m)n)~~ Agency facilities planning determinations made in accordance with ~~subsections (h) and (i) subsection (i) of this Section~~ subsections (h) and (i) shall be subject to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

## SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

**Section 365.610 Requirements for Subagreements**

The intent of this Subpart is to provide for maximum open and free competition in the procurement of materials, goods and services for the construction of projects funded from the

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WPCLP. Any procurement method, except as allowed under this Part 365, that significantly minimizes open and free competition will be prohibited. The following procedures shall apply to subagreements:

- a) **Local Preference**  
Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements under WPCLP loans.
- b) **Profits**  
Only fair and reasonable profits may be earned by contractors in subagreements under WPCLP loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 365.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.
- c) **Loan Recipient Responsibility**  
The loan recipient shall be responsible for the administration and successful accomplishment of the project for which WPCLP loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. Such an individual or firm shall be deemed the loan recipient's agent, and shall be subject to all the provisions of the loan agreement, including this Part 365, that apply to the loan recipient.
- d) **Privity of Contract**  
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts), or to any solicitation or request for proposals under those subagreements.
- e) **Subagreements shall:**
  - 1) Be directly related to the accomplishment of the loan recipient's approved

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work program;

- 2) Be in the form of an executed written agreement (except for small purchases of \$25,000 or less);
  - 3) Be for monetary or in-kind consideration; and
  - 4) Not be in the nature of a grant or gift.
- f) Documentation
- 1) Procurement records and files for purchases in excess of \$25,000 shall include the following:
    - A) The basis for contractor selection;
    - B) The justification for lack of competition if competition appropriate to the type of project work to be performed is required but not obtained; and
    - C) The basis for award cost or price.
  - 2) Procurement documentation as described in subsection(f)(1) shall be retained by the loan recipient or contractor or contractors for the period required by Section 365.820 (Audit and Records) of this Part.
- g) Subagreements shall only be awarded to persons or organizations that:
- 1) Have adequate financial resources for performance;
  - 2) Have the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain these requirements;
  - 3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;
  - 4) Have a satisfactory record of integrity, judgment, and performance;

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- 5) Have an adequate financial management system and audit procedure that which is consistent with auditing standards generally accepted in the United States of America~~generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards~~;
  - 6) Maintain a standard of procurement in accordance with this Part 365;
  - 7) Maintain a property management system that which provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
  - 8) Conform to the civil rights, equal employment opportunity (Appendix A, Exhibit D) and labor law requirements of this Part 365.
- h) Fraud and Other Unlawful or Corrupt Practices
- 1) The obtaining and administration of loans from the WPCLP, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks, and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.
  - 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices brought to its attention. The loan recipient shall advise the Agency immediately when any allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any matter.
- i) Negotiation of Subagreements
- All subagreements shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Procurements may be negotiated by the loan recipient if approved by the Agency for the following reasons:

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- 1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement);
- 2) The aggregate amount of the contract to be competitively negotiated is allowed by State law;
- 3) The materials or services to be procured are available from only one person or firm;
- 4) The procurement is for personal or professional services, or for any services to be rendered by an educational institution;
- 5) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or
- 6) The procurement is for materials or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.620 Construction Contracts**

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

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured, and the notice to proceed.
- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 365.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:

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- 1) Evidence of advertising  
The loan recipient shall submit to the Agency a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the WPCLP as set out in this Part 365, the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor~~the Prevailing Wage Act [820 ILCS 130]~~, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order 11246, as amended (Appendix A, Exhibit D).
- 2) Adequate bidding documents  
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
  - A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (Drawings and specifications may be made available for inspection instead of being furnished.);
  - B) The terms and conditions of the contract to be awarded;
  - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;
  - D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the WPCLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
  - E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan recipient;

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- F) A copy of subsections (b)(2)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;
- G) By submission of the bid, each bidder and, in the case of a joint bid, each party to the joint bid certifies as to his or her own organization, that in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
  - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
  - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33 E-11 of the Illinois Criminal Code of 1961 [720 ILCS 5/33E-11]; and
- H) Each person signing the bid shall certify that:
- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G); or
  - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that the persons determining the prices have not participated, and will not participate, in any action contrary to subsection (b)(2)(G), and as their agent shall so certify.

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He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G).

- 3) Addenda to bidding documents  
If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the loan applicant shall send written addenda to all firms who have obtained bidding documents in time to be considered prior to the bid opening. When appropriate, the time period for submission of bids shall be extended. All addenda to the bidding documents shall be submitted to the Agency for approval prior to the bid opening.
- 4) Award to the low, responsive, responsible bidder
  - A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award, and the loan applicant's letter of intent to award or the official minutes of board approval.
  - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan applicant.
  - C) If the award is intended to be made to a firm that did not submit the lowest bid, prior to any award the loan applicant shall submit to the Agency a written statement explaining why each lower bidder was deemed not responsive or not responsible.
- c) Negotiations of Contract Amendments (Change Orders)
  - 1) Loan recipient responsibility  
The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan

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recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:

- A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
  - B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
  - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
- 2) Changes in contract price or time  
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
- 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
- 4) Agency review  
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:
- A) A description of the changed work;
  - B) The contractor's proposal itemizing the cost and time to complete the changed work;
  - C) The loan recipient's or engineer's estimate of the cost and time to complete the changes;
  - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and

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- E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) Each construction contract shall include the following provisions:
- 1) Audit; access to records:
- A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work in accordance with Generally Accepted Accounting Principles consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c) (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency, or any of their authorized representatives shall have access to the books, records, documents, and other evidence for purposes of inspection, audit, and copying. The contractor shall provide facilities for access and inspection.
- B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.
- C) Audits shall be in accordance with auditing standards generally accepted in the United States of America, consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection

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(d)(1)(A). Where the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of the dispute, appeal, litigation, claim, or exception.
- F) The right of access will generally be exercised with respect to financial records under:
- i) Negotiated prime contracts;
  - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
  - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
- G) The right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:
- i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
  - ii) If there is any indication that fraud, gross abuse, or corrupt practices may be involved in the award or performance of

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the contract or subcontract.

- 2) **Covenant against contingent fees.**  
The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
  - 3) **Wage provisions**  
The contractor shall pay prevailing wages in accordance with the [Davis-Bacon Act \(40 USC 276a through 276a-5\) as defined by the U.S. Department of Labor](#), ~~Illinois Prevailing Wage Act [820 ILCS 130]~~.
  - 4) **Disadvantaged business enterprise requirements**  
The contractor shall provide evidence, including, but not limited to, a copy of the advertisement or advertisements and the record of negotiation, that the contractor has taken affirmative steps in accordance with 40 CFR 33 to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services consistent with the provisions of the Agency's Operating Agreement with USEPA.
  - 5) **Debarment and suspension provisions**  
The contract shall require the successful bidder or bidders to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
  - 6) **Nonsegregated facilities provisions**  
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) **Subcontracts under construction contracts**  
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with:

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- 1) All applicable provisions of federal, State and local law;
  - 2) All provisions of this Part 365 regarding fraud and other unlawful or corrupt practices;
  - 3) All provisions of this Part 365 with respect to access to facilities, records and audit of records; and
  - 4) All provisions of subsection (d)(5) that require a "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
- f) Contractor Bankruptcy  
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.630 Contracts for Personal and Professional Services**

All subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
  - 1) Evidence, such as, but not limited to, a copy of the advertisement or advertisements and the record of negotiation in accordance with 40 CFR 33, that affirmative steps have been taken to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction, and services consistent with the provisions of the Agency's Operating Agreement with USEPA.
  - 2) An audit and access to records clause that provides as follows:

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- A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
- B) Books, records, documents and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained in accordance with Generally Accepted Accounting Principles consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
- C) Audits conducted pursuant to this provision shall be in accordance with auditing standards generally accepted in the United States of America. ~~generally accepted auditing standards.~~
- D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
- E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 365.650 (Disputes) of this Subpart, litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception.
- 3) A covenant against contingent fees clause as follows:  
"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract

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upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

- 4) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
  - 5) A description of the scope and extent of the project work.
  - 6) The schedule for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks.
  - 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.
  - c) If, at the time of contract execution, any of the elements required in this Section 365.630 cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

SUBPART H: REQUIREMENTS APPLICABLE TO  
ACCESS, AUDITING, AND RECORDS

**Section 365.820 Audit and Records**

- a) The loan recipient shall maintain books, records, documents, reports, and other evidentiary material in accordance with Generally Accepted Accounting Principles and accounting procedures and practices consistent with generally accepted government accounting standards in accordance with the American

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~~Institute of Certified Public Accountants Professional Standards.~~

- b) For purposes of this Section 365.820, records shall include, but not be limited to, the following:
- 1) Documentation of the receipt and disposition by the loan recipient of all financial assistance received for the project, including both State financial assistance and any matching share or cost sharing; and
  - 2) Documentation of the costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the loan has been provided.
- c) The loan recipient's facilities, or any facilities engaged in the performance of the WPCLP loan project, and the loan recipient's records shall be subject to inspection and audit by the Agency or its authorized representative, at the times specified in Section 365.810 (Access) of this Subpart.
- d) The loan recipient shall preserve and make its records available to the Agency or its authorized representative for the following periods:
- 1) For all costs associated with design and construction, for 3 years after final loan closing;
  - 2) For all other accounting records concerning the loan, for 3 years from the date of the transaction; and
  - 3) For any longer period required by law or by subsections (e) and (f).
- e) If the loan is completely or partially terminated, the records relating to the terminated work shall be preserved and made available for 3 years after any resulting final termination settlement.
- f) Records that relate to appeals under the "Disputes" clause in Section 365.650 of this Part, litigation or the settlement of claims arising out of the performance of the WPCLP loan project, or to project costs and expenses to which exception has been taken by the Agency or its authorized representatives, shall be retained until the appeals, litigation, claims, or exceptions have been completed.

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- g) Failure of the loan recipient or its contractors or subcontractors to make records available to the Agency as required by Section 365.810 (Access) of this Subpart after 10 days written notice shall be cause for termination of the loan, pursuant to Section 365.330 (Termination) of this Part, and refund to the State of Illinois for deposit into the WPCLP of any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in non-compliance with this Section 365.820 shall repay any loan funds previously spent.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

## SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

**Section 365.910 Sewer Use Ordinance**

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's sewer use ordinance with enactment of the ordinance required prior to the first loan disbursement. The loan applicant shall demonstrate to the satisfaction of the Agency that a sewer use ordinance or other legally binding requirement will be enacted and enforced prior to the first loan disbursement in each jurisdiction served by the ~~treatment works~~ project. The ordinance shall prohibit any connections from inflow sources into the sanitary sewer portions of the sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed.
- b) The sewer use ordinance shall require:
- 1) Pretreatment of any industrial wastes that would otherwise be detrimental to the wastewater treatment works or its proper and efficient operation and maintenance or will otherwise prevent entry of industrial wastes into the wastewater treatment works; and
  - 2) Compliance with 35 Ill. Adm. Code 310 (Pretreatment Programs).
- c) The sewer use ordinance shall prohibit the introduction of industrial waste into the sewer system until the requirements of Section 365.920 (User Charges) of this Subpart are met.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

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**Section 365.920 User Charges**

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's system of user charges. The user charge system must be enacted and enforceable before the first loan disbursement can be made.
- b) The Agency shall approve the user charge system in accordance with the following criteria:
  - 1) For loans issued prior to October 1, 2006, the user charge system must result in the distribution of the cost of operation, maintenance and replacement of treatment works within the loan recipient's service area to each user (or user class) in proportion to the user's contribution to the total wastewater loading of the wastewater treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation, maintenance, and replacement costs to each user (or user class).
  - 2) For the first year of operation of new facilities, operation, maintenance and replacement costs shall be based upon past experience for existing wastewater treatment works or some other rational method that can be demonstrated to be applicable.
  - 3) The loan recipient shall review user charges annually and revise the rates periodically to reflect actual wastewater treatment works operation, maintenance, and replacement costs. The Agency may request a report on the status of the user charge system, including projected costs, actual costs, revenue generated and fund balances at any time.
  - 4) The user charge system shall generate sufficient revenue to offset the cost ~~for~~for all wastewater treatment works operation, maintenance and replacement required to be provided by the loan recipient for all wastewater treatment works or facilities authorized under this Part.
  - 5) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authorizations. If the project is for a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving wastewater

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treatment services from the loan recipient shall have adopted user charge systems. The user charge systems shall also be incorporated in the appropriate municipal legislative enactments, intergovernmental or service agreements or other appropriate authorizations.

- c) Upon approval of a loan recipient's system of user charges, the implementation and maintenance of the approved system shall become a condition of the loan subject to Section 365.310 (Noncompliance with Loan Procedures) of this Part.
- d) The Agency or its authorized representative shall have access to all books, documents, papers, and records of the loan recipient for the purpose of making audit, examination, excerpts, and transcriptions in order to ensure compliance with subsection (b).

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.930 Financial Capability**

- a) The loan applicant shall demonstrate to the Agency that it has the necessary legal, financial, managerial and institutional capability to:
  - 1) Construct, operate and maintain the project for the life of the ~~facility~~wastewater treatment works;
  - 2) Retire the loan in accordance with the schedule to be contained in the loan agreement, including the execution of any necessary intergovernmental agreements, enactment of a system of user charges and any legislative enactments necessary to recover adequate capital costs to repay the loan; and
  - 3) Meet any covenants and requirements in the loan agreement.
- b) To demonstrate financial, managerial and institutional capability, the loan applicant shall, at a minimum, show that:
  - 1) It is empowered under law to own, operate and maintain ~~the facility~~a public wastewater treatment facility, including the facilities to be constructed under the loan;

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- 2) It has the necessary easements, titles, permits and intergovernmental agreements for loan project implementation, as identified in the facilities plan; and
  - 3) It has or will have the necessary qualified personnel to operate and maintain the facility.
- c) The financial capability demonstration shall be submitted to the Agency for approval and shall contain detailed project costs, existing and proposed operation, maintenance and replacement costs, existing and proposed local capital costs and upon request of the Agency, historical information over the past 3 years consisting of audited annual financial statements, bond ratings, numbers of users and tax rate levies.
- d) The Agency may suggest mitigative measures to improve the loan applicant's financial capability to undertake the project, including, but not limited to, acquisition of grant funding, reduction of project costs, additional or different sources of dedicated revenues, efforts to reduce the number of delinquent users, and changes to existing financial practices that may threaten generation of adequate revenues.
- e) The Agency may require a loan term of less than the 20 year maximum. In evaluating the appropriateness of alternative loan terms, the Agency shall consider such factors as the scope of the proposed project, the impacts of alternative loan terms on user fees, and the overall cost of the project.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.940 Dedicated Source of Revenue**

- a) A source of revenue shall be dedicated and pledged to make the loan repayments. Prior to loan approval, the Agency shall review the proposed dedicated and pledged revenue source to assure that it will generate revenues adequate to make the loan repayments and will provide a continuing source of revenue adequate to make loan repayments for the term of the loan. If the source of revenue is pledged in a subordinate position to a revenue bond ordinance, the covenants regarding coverage and reserve for the revenue source shall be equivalent to those in the revenue bond ordinance. At a minimum, the reserve account shall be equal to the annual principal and interest payment funded within 2 years after the loan

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award.

- b) The necessary legislative enactments to dedicate and pledge the source of revenue must be in place before the Agency can make the first loan disbursement.
- c) The loan recipient shall maintain a separate account in its books to record the dedicated revenues for loan repayment.
- d) The loan recipient shall, for the term of the loan, review and adjust the dedicated source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient shall timely notify the Agency ~~of and submit to the Agency for approval~~ all proposed changes to the dedicated source of revenue.
- e) Upon request, the loan recipient shall submit to the Agency a statement on the status of the account required by subsection (c) that contains the status of the dedicated revenue account, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review shall be based on, but not limited to, ensuring that the dedicated source of revenue is legally authorized, generates sufficient revenue and is otherwise in accordance with this Part 365.
- f) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the dedicated revenue source and restructure it as necessary.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

## SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

**Section 365.1010 Determination of Allowable Costs**

The loan recipient shall be paid, upon request, in accordance with Section 365.1030 (Disbursement of Loan Funds) of this Subpart, for all costs within the scope of the approved project, not to exceed the total amount of the loan, and that are determined to be allowable in accordance with the following criteria:

- a) Allowable Project Costs  
All reasonable and necessary costs directly attributable to the design and construction of an eligible, loan assisted ~~wastewater treatment works~~ project that

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are not excluded from loan funding by legislation or non-waivable regulations. Categories of necessary costs include, but are not limited to, the following:

- 1) The direct purchase of materials, equipment and personal services specifically necessary for the completion of a loan funded project;
- 2) Professional and consultant services contracts necessary for design, bidding, and construction of a loan funded project, except as elsewhere limited by this Part 365;
- 3) Costs under approved construction contracts; and
- 4) Costs for premiums for required flood insurance during the project construction period.

b) Ineligible Costs

Categories of cost that are ineligible for loan assistance, and are not subject to the "reasonable and necessary" test of allowability include, but are not limited to, the following:

- 1) Cost for preparing a facilities planning document;
- 2) Cost for basin or areawide planning other than facilities planning;
- 3) Costs outside the scope of the approved facilities plan;
- 4) Site acquisition, including easement compensation, except in those instances where the land itself shall serve as the medium for treatment (e.g., land for spray irrigation of wastewater); and
- 5) Construction of any facilities that do not comply with the definition of a "treatment works" as contained in Section 212 of the Clean Water Act or do not qualify in meeting the federal green project reserve requirement.

c) Disputes Concerning Allowable Costs

The loan recipient shall seek to resolve any questions relating to cost allowability or allocation at the earliest opportunity. Final determinations by the Director concerning the allowability of costs shall be conclusive.

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(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

**Section 365.1020 Use of Loan Funds and Payment of Unallowable Costs**

- a) Loan funds shall be expended solely for approved allowable costs incurred in the design and construction of the project.
- b) The loan recipient shall agree to pay the unallowable costs associated with the project, as well as all allowable costs that exceed the amount of the loan, and shall construct the project or cause it to be constructed to final completion in accordance with the plans and specifications and on the schedule approved by the Agency.
- c) The loan recipient shall commit itself to complete the construction of the ~~project~~operable wastewater treatment works.

(Source: Amended at 34 Ill. Reg. 17582, effective November 8, 2010)

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**Section 365.APPENDIX B Loan Application Documents**

**Section 365.EXHIBIT A Loan Application Form**

**Applicant Information**

L17# \_\_\_\_\_

1. Legal Name of Applicant: \_\_\_\_\_

2. Applicant Address: \_\_\_\_\_

Project Description: \_\_\_\_\_

Federal Employer Identification Number (FEIN)\*: \_\_\_\_\_

\* Submit FEIN Certification (attached)

3. Authorized Representative:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

4. Engineer:

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

5. Attorney:

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

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6. Include detailed construction cost estimate in bid format as part of this application and summarize below:

<u>Construction</u>	\$
<u>Legal/Financial</u>	\$
<u>Design Engineering</u>	\$
<u>Construction Engineering</u>	\$
<u>Other</u>	\$
<u>Contingency</u>	\$
	<hr/>
<u>Total</u>	\$

7. Amount requested for loan \$ \_\_\_\_\_

8. Loan repayment period requested (maximum term is 20 years): \_\_\_\_\_

20 Years

Other (\_\_\_\_\_ number of years)

9. List any other proposed sources of funding in addition to loan request:

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Date Available: \_\_\_\_\_

10. Project Schedule (Indicate "complete" or anticipated date of completion as appropriate)

a) Approved Facilities Planning: \_\_\_\_\_

b) Plans and Specifications completed and submitted to Illinois EPA: \_\_\_\_\_

c) Illinois EPA Permit issued: \_\_\_\_\_

d) Approved Operation, Maintenance and Replacement Revenue System and Dedicated Source of Revenue: \_\_\_\_\_

e) Advertise for Bids: \_\_\_\_\_

f) Initiation of Construction: \_\_\_\_\_

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g) Completion of Construction: \_\_\_\_\_

**Loan Program Certifications**

- Whereas, the application provisions for loans from the Water Pollution Control Loan Program require that the loan applicant provide the following certifications and assurances:

The loan applicant hereby agrees to pay all project costs not covered by the loan. If the project costs provided by the applicant exceed the lesser of 5% of the total project cost or \$100,000, please provide the following information:

Amount to be provided by applicant \$ \_\_\_\_\_

Source of funds \_\_\_\_\_

- The loan applicant hereby certifies that it has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project.
- The loan applicant hereby certifies that no unlawful or corrupt practice has taken place in the planning or design of the proposed project.
- The loan applicant hereby certifies that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project.
- The loan applicant hereby certifies that it is not barred from being awarded a contract or subcontract under Section 10.1 of the Illinois Purchasing Act.

**Certification Regarding Debarment, Suspension and Other Responsibility Matters**

The prospective participant certifies, to the best of its knowledge and belief, that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

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- b) Have not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

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**INTENT REGARDING NATIONAL FLOOD INSURANCE**

Whereas application provisions for loans from the Water Pollution Control Loan Program require compliance with the National Flood Insurance Act of 1968, as amended, and

Whereas the costs of securing and maintaining flood insurance are eligible for loan participation during the approved construction period, and

Whereas failure to secure flood insurance for eligible construction located in designated flood hazard areas will cause this construction to become ineligible for loan funds:

Now therefore, be it resolved that the \_\_\_\_\_ of \_\_\_\_\_ will cooperate and coordinate with the National Flood Insurance Program to acquire and maintain any flood insurance made available for Project L17# \_\_\_\_\_ for the entire useful life of the insurable construction pursuant to the National Flood Insurance Act of 1968, as amended, and that it will secure said flood insurance for each insurable structure, as soon as said insurance is available, and will notify the Illinois Environmental Protection Agency in writing that the National Flood Insurance requirement

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has been satisfied.

**CERTIFICATION REGARDING PROJECT SITE, RIGHTS-OF-WAY, EASEMENTS, AND PERMITS**

1. The applicant has investigated and ascertained the location of the site or sites, rights-of-way, and easements being provided for the facilities in its application for loan assistance. In my opinion, the applicant has a sufficient legal interest in the site or sites, rights-of-way, and easements to permit the building of such facilities thereon and to permit the operation and maintenance of such facilities thereon during the estimated life of the facility by the applicant after the completion of construction.
2. The loan applicant has complied with the provisions of 49 CFR 24 as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601 et seq.).
3. The loan applicant has obtained all the necessary permits as indicated below:

<u>Type of Permit</u>	<u>Permit Number</u>	<u>Date Issued</u>
<u>Army Corps of Eng. 404</u>	_____	_____
<u>IL Dept. of Trans.</u>	_____	_____
<u>County Highway</u>	_____	_____
<u>Other</u>	_____	_____

**AUTHORIZATION OF A REPRESENTATIVE TO SIGN LOAN DOCUMENTS**

Whereas, application provisions for loans from the Water Pollution Control Loan Program require that the \_\_\_\_\_ (name of applicant) of \_\_\_\_\_ (address) authorize a representative to sign the loan application forms and supporting documents; therefore, be it resolved by the \_\_\_\_\_ (name of applicant) of \_\_\_\_\_ (address)

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that \_\_\_\_\_ (name or title) \_\_\_\_\_ is hereby authorized to sign all loan application forms and documents.

I, \_\_\_\_\_ hereby verify that the above information is, to the best of my knowledge, true and correct.

Date: \_\_\_\_\_ Signed by: \_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Attested by: \_\_\_\_\_

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**TAXPAYER IDENTIFICATION NUMBER**

I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a U.S. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.
- If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
- If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.
- If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

or

Employer Identification Number \_\_\_\_\_

Legal Status (check one):

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- |  |  |
|--|--|
| <input type="checkbox"/> <u>Individual</u>   | <input type="checkbox"/> <u>Governmental</u>   |
| <input type="checkbox"/> <u>Sole Proprietor</u>  | <input type="checkbox"/> <u>Nonresident alien</u>  |
| <input type="checkbox"/> <u>Partnership</u>  | <input type="checkbox"/> <u>Estate or trust</u>  |
| <input type="checkbox"/> <u>Legal Services Corporation</u>   | <input type="checkbox"/> <u>Pharmacy (Non-Corp.)</u>   |
| <input type="checkbox"/> <u>Tax-exempt</u>   | <input type="checkbox"/> <u>Pharmacy/Funeral Home/Cemetery (Corp.)</u>                           |
| <input type="checkbox"/> <u>Corporation providing or billing medical and/or health care services</u>     | <input type="checkbox"/> <u>Limited Liability Company (select applicable tax classification)</u> |
| <input type="checkbox"/> <u>Corporation NOT providing or bililng medical and/or health care services</u> | <input type="checkbox"/> <u>D = disregarded entity</u>   |
|  | <input type="checkbox"/> <u>C = corporation</u>  |
|  | <input type="checkbox"/> <u>P = partnership</u>  |

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(Source: Added at 34 Ill. Reg. 17582, effective November 8, 2010)

## ENVIRONMENTAL PROTECTION AGENCY

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**Section 365.APPENDIX B Loan Application Documents****Section 365.EXHIBIT B Program Financial Requirements**

Loan Applicant: \_\_\_\_\_

Loan Number: \_\_\_\_\_

Please answer or submit information indicated, as appropriate.**A. Dedicated Source of Revenue**1.  Home Rule       Non-Home Rule2. Type of loan instrumenta.  General Obligation Debtb.  Alternate (double barreled) bonds with property tax levy that pledges an alternate revenue source of \_\_\_\_\_c.  Water     Sewer     Combined System Revenues – Senior Liend.  Water     Sewer     Combined System Revenues – Subordinate Lien3. Authority of applicant to issue debta.  Home rule powersb.  Specific authorizing statute:      ILCS \_\_\_\_\_c.  Other (specify)4. Please submit a copy of the certified ordinance authorizing the debt to be incurred, along with existing ordinances if a subordinate lien is proposed. If this is a subordinate lien, the certified ordinance authorizing debt must have provisions for equivalent accounts and coverage.5. Please submit a signed legal opinion with respect to the validity and enforceability of the applicant's obligations (the bond ordinance) and the absence of conflicts with other agreements, bonds or ordinances.

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6. Please submit a detailed demonstration that the dedicated source of revenue will provide adequate revenues to repay the loan in accordance with the terms of the loan agreement, including meeting any covenants and requirements in the loan agreement.

Please complete **EITHER** Section B. or Section C. below, as appropriate:

B. User Charge System (complete tasks if an Agency approved user charge system IS NOT in place)

1. Please submit a detailed Operation, Maintenance and Replacement (OM&R) budget.
2. Please provide calculations to demonstrate how the rates and surcharges are calculated. The rates should be expressed in cost per unit of usage, i.e., per 1,000 gallons, per 100 cubic feet, when appropriate).
3. Please submit copies of certified sewer use and sewer rate ordinances.

C. Supplemental Review (complete tasks if an Agency approved user charge system IS in place)

1. Please provide a statement certifying that the sewer use and sewer rate ordinances originally approved are in place and being enforced. The certification should also address the following questions:
  - a. Is an annual review of the User Charge System and wastewater/other service charges being performed?
  - b. Is the User Charge System generating sufficient revenue to recover the Operation, Maintenance and Replacement (OM&R) Costs?
  - c. Will this project result in substantial changes to the costs for Operation, Maintenance and Replacement?

Include ordinance numbers and effective dates, and please reference any amendments made to the ordinances since their approval.

2. If the project will result in substantial changes in costs for Operation, Maintenance and Replacement, please submit a proposed budget for the first year OM&R costs and a

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review of wastewater/other service charges, along with necessary revisions to the rate ordinance, when appropriate.

D. Tax Exemption Certificate and Agreement

1. Please provide a signed copy of the Tax Exemption Certificate and Agreement. This document can be accessed on the Agency's website at: [http://www.epa.state.il.us/water/forms#html\\_financial-assistance](http://www.epa.state.il.us/water/forms#html_financial-assistance) or by calling 217/782-2027.

2. Are other entities substantially benefiting (greater than 5%) from the project?

Yes       No

Please submit copies of any applicable service agreements with substantial beneficiaries.

I hereby certify that the above information is, to the best of my knowledge, true and accurate.

\_\_\_\_\_  
(Authorized Representative)

\_\_\_\_\_  
(Date)

**Financial Information Requirements**

Prior to the issuance of a loan agreement, the loan applicant must provide detailed and sufficient information to allow the Agency to determine that the applicant (1) is financially capable, (2) has pledged a Dedicated Source of Revenue that is adequate to retire the debt and meet any covenants and requirements in the loan agreement, and (3) has established a Sewer Use and User Charge System, when applicable, that will generate adequate revenues to repay the loan and accommodate costs for operation, maintenance and replacement of the facilities to be constructed.

These financial information requirements can generally be accomplished by completing the Financial Information Checklist above, which will necessarily involve the enactment of an ordinance or other legal instrument authorizing the debt to be incurred, and the development and enactment of an ordinance or other legal instrument establishing a User Charge System and

## ENVIRONMENTAL PROTECTION AGENCY

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Sewer Use System, when applicable. If a User Charge System has been previously approved by the Agency, evidence will be required to assure that the system has been adequately maintained, is being enforced and will continue to produce adequate revenues.

This brief summary of WPCLP loan rules, Agency review procedures, and information that must be submitted for the Agency's review is being provided along with the Financial Information Checklist above to provide guidance for potential loan recipients.

#### Financial Capability

The Agency will require the loan applicant to demonstrate that it has the legal, financial, managerial and institutional capability to retire the loan and to construct, operate and maintain the project for the life of the facilities to be constructed. The applicant must also demonstrate the ability to meet any covenants contained in the loan agreement.

The Agency's Financial Capability review will be conducted using items submitted as part of the loan application, including our review of the Dedicated Source of Revenue and the User Charge System as detailed below. If the Agency is unable to make a Financial Capability determination based on the loan application, the submission of additional financial data, including audited financial statements, may be required.

#### Dedicated Source of Revenue

The Agency will require that a specific source(s) of revenue be dedicated and pledged to make the loan repayments. Prior to the Agency's approval of the dedicated source(s) of revenue, the applicant must demonstrate that the pledged revenue source(s) will generate adequate revenues to make loan repayments for the term of the loan. The term of the loan will be specified in the loan agreement, but shall not exceed 20 years from the initiation of operation date contained in the loan agreement. Additional points that must be considered during the development of the dedicated source of revenue are:

- The dedicated source of revenue is usually pledged by the loan applicant in the form of an adopted ordinance that pledges a specific and dedicated source of revenue for repayment of the loan. The adopted ordinance will in most cases pledge a very stable source of revenue, such as revenues of the system, in the form of a revenue bond. General obligation and alternate bond ordinances are also acceptable. The loan applicant will be responsible for meeting all publication requirements, including publication of the Notice of Intent to Borrow Funds and Right to File a Petition, when applicable.

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- In the case of revenue bonds, the Agency will require that debt service coverage requirements for the IEPA loan be equal to any outstanding senior debt that is payable from revenues of the system, or from other revenues that are pledged for repayment of the loan. If a sewer service charge is used, the rate ordinance and sewer rate must be adopted prior to first disbursement on the loan. State law requires a 1.25 x coverage test for alternate bonds, and parity revenue bonds must also meet the covenants made to outstanding investors.
- The Agency will require the loan applicant to furnish a legal opinion verifying the legality and acceptability of the ordinance and other elements of the debt instrument selected for repayment of the loan. This opinion will necessarily address the validity and enforceability of the loan recipient's obligations and the absence of conflicts with other agreements, bonds or ordinances. Retention of bond counsel is optional.

User Charge System

The Agency will require the loan applicant to establish a User Charge System, or alternative revenue collection system that will generate adequate revenues to make loan repayments for the term of the loan and to accommodate costs for operation, maintenance and replacement of the facilities to be constructed. The establishment of a User Charge System is generally accomplished by the development and enactment of an ordinance establishing a Sewer Use and User Charge (Sewer Rate) System to govern terms and charges for use of the system. If alternative revenue sources (not system revenues) will be dedicated to the project, other appropriate legal instruments will be required to secure a revenue stream and ensure debt service on the loan.

If the applicant has a previously approved User Charge System, the Agency will review the system to ascertain that the system was enacted and has been maintained in accordance with the previous approval and that it will continue to produce adequate revenues for the proposed project.

(Source: Added at 34 Ill. Reg. 17582, effective November 8, 2010)

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**Section 365.APPENDIX B Loan Application Documents**

**Section 365.EXHIBIT C Bid Certifications Form**

Loan Applicant: \_\_\_\_\_

Loan Number: \_\_\_\_\_

Please answer or submit information indicated, as appropriate.

1. Please submit evidence of advertising, including a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the WPCLP as set out in this Part 365, the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], the Disadvantaged Business Enterprise program requirements (40 CFR 33) and Executive Order 11246, as amended (Appendix A, Exhibit D) (reference Section 365.620(b)(1)).

a) The advertisement was placed in the: \_\_\_\_\_ newspaper\*

\* "Key" newspaper required (reference DBE Guidance at: <http://www.epa.state.il.us/water/forms/html#financial-assistance>)

b) The advertisement was placed on: \_\_\_\_\_ (date)

c) The date of bid opening is: \_\_\_\_\_

d) Bid holding period is: \_\_\_\_\_ days

2. Please submit the bid tabulation and the selected bidder's proposal (bid form only) reflecting any addenda issued during the bidding period (reference Section 365.620(b)).

a) Number of bids received: \_\_\_\_\_

b) Low/High range for base bids: \_\_\_\_\_ to \_\_\_\_\_

c) Is the loan recipient awarding to the lowest responsive, responsible bidder?

Yes  No

## ENVIRONMENTAL PROTECTION AGENCY

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If not, please submit justification disqualifying the apparent lowest bidder (reference [Section 365.620\(b\)\(4\)\(C\)](#)).

d. Are there appeals or protests? Please answer yes or no: \_\_\_\_\_

3. Please list and provide a summary of any addenda issued during the bidding period. The summary should reflect any change to major equipment or suppliers in the proposal and any alternates (deductive/additive) to be used in the project. Please include a statement that applicable addenda and alternates (deductive/additive) have been approved by the Agency's Permit Section.

4. Please submit the consultant's analysis of bids and recommendation for award (reference [Section 365.620\(b\)\(2\)\(c\)](#)).

5. Please submit the loan applicant's letter of intent to award or the official minutes of board approval for the award (reference [Section 365.620\(b\)\(4\)\(A\)](#)).

6. Please submit a summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33. Guidance for loan applicants on DBE requirements can be found on the Agency's website at <http://www.epa.state.il.us/water/forms.html#financial-assistance>. At a minimum, the loan applicant shall submit completed and signed copies of Forms 6100-3 (DBE Subcontractor Performance Form) and 6100-4 (DBE Subcontractor Utilization Form) if DBE inquiries are received on the project.

7. Bid Certifications – By submission of these bids and by certification provided hereunder, the loan applicant certifies that, to the best of its knowledge and belief, it and its principals have read and understand the various requirements pertaining to bids as embodied in these loan rules and that the specific certifications detailed below are provided by submission of these bids.

8. Contractor Certifications – Completed copies of three additional certifications must be executed by the selected contractor and submitted by the loan applicant, including a Certification of Non-Segregated Facilities, a Bidder Certification in Compliance with Article 33E to the "Criminal Code of 1961" and a Certification Regarding Debarment, Suspension and Other Responsibility Matters. Forms acceptable for this purpose are provided in this package below.

## ENVIRONMENTAL PROTECTION AGENCY

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**Bid Certifications**

- The loan applicant hereby certifies that the bidding documents include: a complete statement of the work to be performed, including necessary drawings and a required completion schedule; the terms and conditions of the contract to be awarded; a clear explanation of the method of bidding, the method for evaluation of bid prices and the basis and method for award of the contract; a statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the WPCLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract; and a summary of responsibility requirements or criteria that may be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan recipient.
- The loan applicant hereby certifies that the certifications contained in Section 365.620(b)(2)(G) and (H) in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid.
- The loan applicant hereby certifies that the proposal is consistent with approved specifications in terms of quantity, description and eligibility.
- The loan applicant hereby certifies that any addenda issued during the bidding period were distributed to all prospective bidders and approved by the Agency.
- The loan applicant hereby certifies that a bid bond or cashier's check for not less than five percent (5%) of the bid amount and signed power of attorney is provided (reference [Section 365.620\(a\)](#)).
- The loan applicant hereby certifies that any change to major equipment or suppliers in the proposal has been approved by the Agency (Permit Section), that alternates (deductive/additive) taken have been approved by the Agency (Permit Section) and that an approved Permit # \_\_\_\_\_ is in place for the project.
- The loan applicant hereby certifies that a list of all subcontractors being utilized on the project will be maintained in the project file and made available for

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inspection upon request. The subcontractors list should include a name, address and telephone number for all subcontractors being used.

I hereby certify that the above information, including all certifications provided to comply with the procedures for issuing loans from the WPCLP, is, to the best of my knowledge, true and accurate.

\_\_\_\_\_  
(Authorized Representative)

\_\_\_\_\_  
(Date)

**Contractor Certifications**

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**CERTIFICATION OF NONSEGREGATED FACILITIES**

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 that are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he or she does not maintain or provide for his or her employees any segregated facilities at any of his or her establishments, and that he or she does not permit his or her employees to perform their services at any location, under his or her control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he or she will not maintain or provide for his or her employees any segregated facilities at any of his or her establishments, and that he or she will not permit his or her employees to perform their services at any location, under his or her control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise. The federally assisted construction contractor agrees that (except when he or she has obtained identical certifications from proposed subcontractors for specific time periods) he or she will obtain identical certifications from

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proposed subcontractors prior to the award of subcontracts exceeding \$10,000 that are not exempt from the provisions of the Equal Opportunity clause, and that he or she will retain such certification in his or her files.

Signature

Date

Name and Title of Signer (Please type)

Firm Name

NOTE: The penalty for making false statements in offers is prescribed in 18 USC 1001.

Bidder Certification  
In Compliance with Article 33E to the  
Criminal Code of 1961

I \_\_\_\_\_, do hereby certify that:  
Name

1. I am \_\_\_\_\_ of the \_\_\_\_\_  
Position Firm  
and have authority to execute this certification on behalf of the firm.

2. This firm is not barred from bidding on this contract as a result of a violation of  
either Section 33E-3, Bid-rigging, or Section 33E-4, Bid Rotating, as set forth in  
Article 33E to the Criminal Code of 1961.

Name of Firm \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

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Date \_\_\_\_\_

Corporate Seal (when appropriate)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who, being

(Name)

duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by \_\_\_\_\_ to execute the affidavit and did so

(Name of Firm)

as his or her free act and deed.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Commission Expires)

Notary Seal

EPA Project Control #: \_\_\_\_\_

United States Environmental Protection Agency  
Washington DC 20460

**Certification Regarding Debarment, Suspension and Other Responsibility Matters**

The prospective participant certifies, to the best of its knowledge and belief, that it and its principals:

## ENVIRONMENTAL PROTECTION AGENCY

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- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b) Have not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

---

(Typed Name & Title of Authorized Representative)

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(Signature of Authorized Representative)

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(Date)

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I am unable to certify the above statements. My explanation is attached.

(Source: Added at 34 Ill. Reg. 17582, effective November 8, 2010)

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- 1) Heading of the Part: Procedures For Issuing Loans From the Public Water Supply Loan Program
- 2) Code Citation: 35 Ill. Adm. Code 662
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
662.110	Amended
662.120	Amended
662.130	Amended
662.140	Amended
662.210	Amended
662.220	Amended
662.230	New Section
662.240	New Section
662.340	Amended
662.410	Amended
662.420	Amended
662.430	Amended
662.440	Amended
662.450	Amended
662.470	Amended
662.510	Amended
662.520	Amended
662.610	Amended
662.620	Amended
662.630	Amended
662.820	Amended
662.910	Amended
662.920	Amended
662.930	Amended
662.1010	Amended
662.1020	Amended
662.1110	Amended
662.APPENDIX B EXHIBIT A	New Section
662.APPENDIX B EXHIBIT B	New Section
662.APPENDIX B EXHIBIT C	New Section
- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act. [415 ILCS 5/19.1-19.9]

## ENVIRONMENTAL PROTECTION AGENCY

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- 5) Effective Date of Amendments: November 8, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Illinois Environmental Protection Agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: June 25, 2010; 34 Ill. Reg. 8133
- 10) Has JCAR issued a Statement of Objection to these Amendments? No
- 11) Differences between proposal and final version: Grammatical and punctuation changes were made as agreed upon with JCAR. In Section 662.130, added a definition for "Facilities". In Section 662.230, added "This information will be added to this rule." at the end of the Agency Note. In Section 662.240, added "This information will be added to this rule." at the end of the Agency Note. In Section 662.470(b), added "by considering the status of the Fund, capitalization grant amounts, economic conditions and requirements established by USEPA.". Also added "and will be added to this rule" at the end of the Agency Note in this Section.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No. A companion emergency amendment expired on November 6, 2010.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: This rulemaking reflects changes to Section 19.3 of the Environmental Protection Act [415 ILCS 5/19.3] in conjunction with Capitalization Grant Agreement with USEPA, which now requires the Agency to allow for principal forgiveness and to address green infrastructure projects.
- 16) Information and questions regarding these adopted amendments shall be directed

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Stefanie Diers, Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19726  
Springfield, Illinois 62794-9276

217/782-5544

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

## ENVIRONMENTAL PROTECTION AGENCY

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE F: PUBLIC WATER SUPPLIES  
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCYPART 662  
PROCEDURES FOR ISSUING LOANS FROM THE  
PUBLIC WATER SUPPLY LOAN PROGRAM

## SUBPART A: INTRODUCTION

Section	Purpose
662.110	Purpose
662.120	Administration
662.130	Definitions
662.140	Incorporations by Reference

SUBPART B: FEDERAL REQUIREMENTS FOR  
THE PUBLIC WATER SUPPLY LOAN PROGRAM

Section	Purpose
662.210	Uses of the Public Water Supply Loan Program
662.220	Agency Responsibilities Under the Federal Safe Drinking Water Act
<a href="#">662.230</a>	<a href="#">Green Project Reserve</a>
<a href="#">662.240</a>	<a href="#">Principal Forgiveness</a>

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

Section	Purpose
662.310	Noncompliance with Loan Procedures
662.320	Stop-Work Order
662.330	Termination
662.340	Waiver of Procedures

## SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section	Purpose
662.410	Project Priority Determination

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- 662.420 Pre-Applications for Financial Assistance and Identification of Projects to be Funded
- 662.430 Financial Assistance Application and Approval
- 662.440 Fixed Loan Rate
- 662.450 Refinancing
- 662.460 Limitation on Design Cost
- 662.470 Limitation on Loan ~~Assistance~~Amount
- 662.480 Loans to Privately Owned Community Water Supplies

## SUBPART E: PROJECT PLANNING REQUIREMENTS FOR LOAN PROJECTS

## Section

- 662.510 Loan Applicant's Responsibilities During Project Planning
- 662.520 State Environmental Review

## SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

## Section

- 662.610 Requirements for Subagreements
- 662.620 Construction Contracts
- 662.630 Contracts for Personal and Professional Services
- 662.640 Compliance with Procurement Requirements for Construction Contracts
- 662.650 Disputes
- 662.660 Indemnity
- 662.670 Covenant Against Contingent Fees

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

## Section

- 662.710 Construction Initiation
- 662.720 Project Changes
- 662.730 Construction Engineering
- 662.740 Operation and Maintenance of the Project
- 662.750 Final Inspection

## SUBPART H: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING, AND RECORDS

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## Section

- 662.810 Access
- 662.820 Audit and Records
- 662.830 Single Audit Act

## SUBPART I: FINANCIAL AND MANAGERIAL CAPACITY

## Section

- 662.910 Operation, Maintenance and Replacement Revenue System
- 662.920 Financial Capability
- 662.930 Dedicated Source of Revenue for Local Government Units
- 662.935 Source of Revenue and Security for Privately Owned Community Water Supplies
- 662.940 Floodplain Insurance

## SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

## Section

- 662.1010 Determination of Allowable Costs
- 662.1020 Use of Loan Funds and Payment of Unallowable Costs
- 662.1030 Disbursement of Loan Funds

SUBPART K: PROCEDURES FOR LOAN REPAYMENT  
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## Section

- 662.1110 Loan Repayment to the Agency
- 662.1120 Delinquent Loan Repayments

## 662.APPENDIX A Executive Orders

- 662.EXHIBIT A Executive Order 11625 (Repealed)
- 662.EXHIBIT B Executive Order 12138 (Repealed)
- 662.EXHIBIT C Executive Order 12549
- 662.EXHIBIT D Executive Order 11246

662.APPENDIX B Loan Application Documents

- 662.EXHIBIT A Loan Application Form
- 662.EXHIBIT B Program Financial Requirements
- 662.EXHIBIT C Bid Certifications Form

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

**SOURCE:** Emergency rule adopted at 21 Ill. Reg. 10091, effective July 17, 1997, for a maximum of 150 days; emergency expired on December 13, 1997; adopted at 22 Ill. Reg. 3782, effective February 10, 1998; amended at 24 Ill. Reg. 16245, effective November 1, 2000; emergency amendment at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 15575, effective October 28, 2009; emergency amendment at 34 Ill. Reg. 8406, effective June 10, 2010, for a maximum of 150 days; emergency expired November 6, 2010; amended at 34 Ill. Reg. 17661, effective November 8, 2010.

## SUBPART A: INTRODUCTION

**Section 662.110 Purpose**

The federal Safe Drinking Water Act Amendments of 1996 include a mechanism to provide capitalization grants to the states for the purpose of establishing drinking water revolving loan funds. 42 ~~USC~~U.S.C. 300j-12 authorizes the Administrator of the United States Environmental Protection Agency to enter into agreements with the states to establish these loan funds, and establishes specific requirements for the development and operation of the state loan programs. The Illinois General Assembly has created the Public Water Supply Loan Program (PWSLP), to be administered by the Illinois Environmental Protection Agency [415 ILCS 5/19.1 through 19.9]. This Part 662 sets out the procedures the Agency will use to operate the PWSLP, including the issuance of loans for the construction of public water supply facilities and the use of additional subsidization terms, including forgiveness of principal, negative interest rates, and grants to eligible applicants for the construction of drinking water facilities and other facilities that meet the federal green project reserve requirement.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.120 Administration**

- a) The Public Water Supply Loan Program, an interest-bearing special fund, will be administered by the Agency as an instrumentality of the State of Illinois in accordance with the Operating and Capitalization Grant Agreements between the Agency and the USEPA in accordance with State and federal laws.
- b) Copies of forms that are required and sample language that can be used to satisfy the requirements of a PWSLP loan application can be obtained from the Illinois

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Environmental Protection Agency, Infrastructure Financial Assistance Section,  
1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois  
62794-9276 and is also available at the Agency's website at  
<http://www.epa.state.il.us/water/forms.html#financial-assistance>.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.130 Definitions**

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted thereunder.
- b) For the purposes of this Part, the following definitions apply:

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

Agency – Illinois Environmental Protection Agency.

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

Billed Customers – The customers receiving a bill who are responsible for paying for water services.

Binding Commitment – A legal obligation between the Agency and a [loan recipient](#) ~~local government unit or privately owned community water supply~~ to provide financial assistance from the Public Water Supply Loan Program to that ~~loan recipient~~ ~~local government unit or privately owned community water supply~~, specifying the terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

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

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

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

Capitalization Grant Agreement – The agreement entered into each federal fiscal year between the Agency and the USEPA for the purpose of providing a grant to capitalize the PWSLP and enable the Agency to provide assistance for [PWSLP projectseonstruction-of-public-water-supply-facilities](#).

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

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

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

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

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

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Director – Director of the Illinois Environmental Protection Agency.

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

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

Facilities – Equipment or operating systems that are constructed, installed or established to serve the particular purpose of improving or augmenting sustainability for public water supplies and public water supply facilities in a watershed. Facilities may involve stand-alone projects or be involved as component pieces of public water supplies and public water supply projects. Facilities in the context of the Green Project Reserve will address green infrastructure, water and energy efficiency improvements and other environmentally innovative activities.

Fixed Loan Rate – The fixed loan rate shall be 1.25% for loans issued from funds provided under the PWSLP in federal fiscal years 2010 and 2011, extending through and including September 30, 2011. Thereafter, the fixed loan rate shall be determined on an annual basis by the procedures defined in Section 662.440 (Fixed Loan Rate) of this Part. ~~One-half the market interest rate but not less than 2.50%.~~

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

Green Infrastructure – Includes a wide array of practices at multiple scales that manage and treat stormwater and that maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduces overall imperviousness in a watershed. On a

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local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

Green Project Reserve – The particular portion of a Capitalization Grant Agreement that is required to be set-aside or reserved, and that shall be used by the State for projects that address green infrastructure, water and energy efficiency improvements, and other environmentally innovative activities as directed by federal law.

Health Hazard Determination – A health hazard determination exists when concentrations of regulated contaminants, in a water supply, or concentrations of contaminants not otherwise regulated, exceed health effects standards published in U.S. Environmental Protection Agency (USEPA) Health Advisories, or by the Illinois Department of Public Health or by the Centers for Disease Control and Prevention or ~~that which~~ otherwise pose an immediate threat to public health.

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

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

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

Interest Rate – Not less than ~~one-half one-fourth~~ of the Fixed Loan Rate ~~market interest rate~~ rounded to the nearest .01%.

Loan Agreement – The contractual agreement between the Agency and the local government unit or privately owned community water supply ~~that which~~ contains the terms and conditions governing the loan issued from the PWSLP.

Loan Applicant – A local government unit or privately owned community water supply that has applied for a loan from the PWSLP for construction of public water supply facilities.

Loan Commitment Letter – The letter that is sent by the Agency to the loan

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applicant ~~that which~~ reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The procedures for issuing loans from the Public Water Supply Loan Program as set out in this Part 662.

Loan Recipient – A local government unit or privately owned community water supply ~~that which~~ has been provided a loan for construction of public water supply facilities from the PWSLP and ~~that which~~ will own and be responsible for the operation and maintenance of the community water supply facility.

Loan Support Rate – Not more than ~~one-half one-fourth~~ of the [Fixed Loan Rate](#) ~~market interest rate~~ rounded to the nearest .01%.

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

Market Interest Rate – The mean interest rate of the 20 General Obligation Bond Buyer Index, from ~~October~~ [July](#) 1 to ~~September~~ [June](#) 30 of the preceding ~~federal~~ [State](#) fiscal year rounded to the nearest .01%.

Maximum Contaminant Level (MCL) – The maximum permissible level of a contaminant in water that is delivered to any user of a public water system.

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

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

*Privately Owned Community Water Supply – An investor-owned water utility, if under Illinois Commerce Commission regulation and operating as a separate and distinct water utility; a not-for-profit water corporation, if operating specifically as a water utility; and a mutually owned or cooperatively owned community*

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*water system, if operating as a separate water utility.* [415 ILCS 5/19.2]

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

Project Priority List – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 663: Subpart B (Procedures for Calculating the Loan Priority Index) ~~that which~~ the Agency has determined are eligible to receive financial assistance from the PWSLP.

PWSLP – The Public Water Supply Loan Program as authorized by Section 19.2 of the Environmental Protection Act [415 ILCS 5/19.2].

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

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

SDWA – The federal Safe Drinking Water Act, as amended (42 USC 300f).

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

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

Treatment Technique Requirement – An enforceable procedure developed by USEPA when it is not economically or technologically feasible to ascertain the level of a contaminant. Public water supplies must follow this procedure and treat

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their drinking water supplies according to USEPA specifications to ensure the contaminant is controlled.

Useful Life – The estimated period during which a public water supply facility is intended to be operable.

USEPA – The United States Environmental Protection Agency.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.140 Incorporations by Reference**

- a) The following [California State University Sacramento School of Engineering \(Office of Water Programs, 6000 J Street, Sacramento CA 95819-6025\)](#) publications are incorporated by reference:
- ~~1)~~ ~~American Institute of Certified Public Accountants Professional Standards (1996), 666 Fifth Avenue, New York, New York 10019.~~
  - ~~2)~~ ~~California State University, Sacramento, School of Engineering:~~
    - 1A) Small Water System Operation and Maintenance, Third Edition, 1995;
    - 2B) Water Distribution System Operation and Maintenance, Third Edition, 1996;
    - 3C) Water Treatment Plant Operation, Volume I, Third Edition, 1996 and Volume II, Second Edition, 1995.
- b) This Part 662 incorporates no future editions or amendments.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

SUBPART B: FEDERAL REQUIREMENTS FOR  
THE PUBLIC WATER SUPPLY LOAN PROGRAM**Section 662.210 Uses of the Public Water Supply Loan Program**

- a) *To accept and retain funds from grant awards, appropriations, transfers and*

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*payments of interest and principal;*

- b) *To make direct loans at or below market interest rates and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants, to any eligible local government unit or to any eligible privately owned community water supply to finance the construction of public water supplies and projects that fulfill the federal State Revolving Fund grant requirements for a green project reserve;*
- c) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below interest rates to any eligible local government unit or to any eligible privately owned community water supply, and to provide additional subsidization to any eligible local government unit or to any eligible privately owned community water supply, including, but not limited to, forgiveness of principal, negative interest rates, and grants;*
- d) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to buy or refinance the debt obligation of a local government unit for costs incurred on or after October 1, 2008;*
- e) *With respect to the funds provided under the American Recovery and Reinvestment Act of 2009, to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for a local government unit for costs incurred on or after October 1, 2008;*
- f) *To make direct loans at or below market interest rates and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants, to any eligible local government unit or to any eligible privately owned community water supply to~~to~~ buy or refinance debt obligations ~~for costs of a local government unit~~ incurred on or after July 17, 1997 for construction of water supplies, and projects that fulfill federal State Revolving Fund grant requirements for a green project reserve;*
- g) *To guarantee local obligations where such action would improve credit market access or reduce interest rates;*
- h) *As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State, if the proceeds of such bonds will be deposited in the PWSLP;*

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- i) *To transfer funds to the Water Pollution Control Loan Program.* [415 ILCS 5/19.3(d)]

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.220 Agency Responsibilities Under the Federal Safe Drinking Water Act**

The Agency will prepare an Intended Use Plan (IUP) and negotiate an Operating Agreement with USEPA, which will be the basis for the Capitalization Grant Agreement. These documents establish the procedures, activities and assurances for operation of the PWSLP, including but not limited to the following:

- a) Grant payments will be accepted in accordance with a payment schedule established jointly by the Agency and the USEPA;
- b) [In satisfaction of the requirements of the Capitalization Grant Agreement](#), ~~A 20%~~ State match will be deposited into the PWSLP according to an agreed upon schedule;
- c) A listing and description of projects on the Project Priority List to be provided financial assistance, the terms of financial assistance and the size of the community served;
- d) The loan repayment period cannot exceed 20 years beyond the earlier of the initiation of operation date or the initiation of the loan repayment period;
- e) All repayments of loan principal and interest ~~shall~~must be deposited into the PWSLP;
- f) Biennial reporting to the USEPA on the Agency's activities under the federal Safe Drinking Water Act;
- g) A description of the criteria and methods used for distribution of funds; and
- h) A description of the financial status of the PWSLP.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

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**Section 662.230 Green Project Reserve**

Amounts required by the terms of the Capitalization Grant Agreement shall be for projects to address green infrastructure, water and energy efficiency improvements and environmentally innovative activities.

AGENCY NOTE: Loan applicants and other interested parties may obtain additional information on current Green Project Reserve amounts and guidance by accessing the Agency's website at: <http://www.epa.state.il.us/water/financial-assistance> or by telephone at 217/782-2027. This information will be added to this rule.

(Source: Added at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.240 Principal Forgiveness**

All financial assistance from the PWSLP shall be in the form of low interest loans, with principal forgiveness terms used and applied as necessary to meet specific requirements of the federal Capitalization Grant Agreement. The availability, amounts, limitations and method of distribution for any principal forgiveness of the loan amount shall be determined by the Director of the Agency based upon USEPA requirements and the terms of the Capitalization Grant Agreement, economic conditions, status of the Fund and other relevant criteria.

AGENCY NOTE: Loan applicants and other interested parties may obtain additional information on current principal forgiveness terms by accessing the Agency's website at: <http://www.epa.state.il.us/water/financial-assistance> or by telephone at 217/782-2027. This information will be added to this rule.

(Source: Added at 34 Ill. Reg. 17661, effective November 8, 2010)

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

**Section 662.340 Waiver of Procedures**

- a) Except as provided in subsection (b) of this Section or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan applicant, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce an

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applicant's ability to repay the loan to the Agency or will not, in general, weaken the financial position of the PWSLP. The waiver may be subject to such additional conditions the Director deems necessary.

- b) The following procedures will not be waived:
- 1) Section 662.410 (Project Priority Determination) of this Part
  - 2) Section 662.440 (Fixed Loan Rate) of this Part
  - 3) Section 662.510 (Loan Applicant's Responsibilities During Project Planning) of this Part
  - 4) Section 662.520 (State Environmental Review) of this Part
  - 5) Section 662.620(d)(3) (Wage Provisions) of this Part
  - 6) Section 662.620(d)(4) (Disadvantaged Business Enterprise Requirements) of this Part
  - 7) Section 662.620(d)(5) (Debarment and Suspension Certification) of this Part
  - 8) Section 662.630(a)(1) (Disadvantaged Business Enterprise Requirements) of this Part
  - 9) Section 662.630(a)(4) (Debarment and Suspension Certification) of this Part
  - 10) Section 662.740 (Operation and Maintenance of the Project) of this Part
  - 11) Section 662.910 (Operation, Maintenance and Replacement Revenue System) of this Part
  - 12) Section 662.930 (Dedicated Source of Revenue for Units of Local Government) of this Part
  - 13) Section 662.935 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part.

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- c) [Notwithstanding subsections \(b\)\(10\) and \(b\)\(11\), Sections 662.740 and 662.910 of this Part can be waived for projects that fulfill federal State Revolving Fund grant requirements for the green project reserve.](#)

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

## SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

**Section 662.410 Project Priority Determination**

- a) Financial assistance from the PWSLP will be provided ~~only to local government units and eligible privately owned community water supplies~~ for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 663.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 663 after the receipt by the Agency of both loan pre-applications pursuant to Section 662.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved Project Planning pursuant to Section 662.510 (Loan Applicant's Responsibilities During Project Planning) and Section 662.520 (State Environmental Review) of this Part. For a project represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.
- c) Projects included on the Intended Use Plan will be selected from projects on the Project Priority List in priority order, provided the project has an approved Project Plan and is scheduled to initiate construction by March 31 of the subsequent federal fiscal year.
- d) [Cash Flow Demand Funding](#)  
[The available funds for a project may be decreased by the Agency to reflect the amount of funds needed to meet cash flow demands for that project during the current funding cycle or to accommodate the funding constraints of the PWSLP. Projects that receive adjustments to meet cash flow demands or to accommodate the funding constraints of the PWSLP may be afforded an opportunity for additional funding in future funding cycles as funds become available under the terms and interest rate available in that funding cycle.](#)

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(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.420 Pre-Applications for Financial Assistance and Identification of Projects to be Funded**

- a) Every loan applicant shall submit to the Agency a signed and dated pre-application form that includes at a minimum the following items:
  - 1) Legal name of applicant and eligibility status;
  - 2) Address;
  - 3) Authorized representative-name and title;
  - 4) Reason for project;
  - 5) Number of billed customers;
  - 6) Project description;
  - 7) Cost estimate; and
  - 8) Project schedule.
- b) Loan applicants seeking financial assistance, during any federal fiscal year commencing October 1, must file a new pre-application annually by the preceding March 31 to qualify for possible inclusion in the Intended Use Plan.
- c) A project with approved project planning may be added to the Project Priority List at any time by the submission of a pre-application.
- d) The Agency shall publish a list of the projects ~~that which~~ are proposed for funding ~~during the next federal fiscal year~~. These projects will be included in the Intended Use Plan.
- e) After January 1 of each year, the Agency may bypass projects on the Intended Use Plan that cannot meet the schedule to initiate construction by March 31 of that year. The Agency will evaluate projects in priority order and may offer loan commitments to other projects on the Project Priority List in accordance with

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Section 662.430 (Financial Assistance Application and Approval) of this Subpart.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.430 Financial Assistance Application and Approval**

- a) In order to issue a loan commitment letter, the Agency must have received the following documents:
  - 1) A completed Loan Application Form for financial assistance (Appendix B, Exhibit A), which will necessarily include the following certifications and authorizations with regard to the proposed project:
    - A) Loan Program Certifications;
    - B) Certification Regarding Debarment, Suspension and Other Responsibility Matters;
    - C) Certification of Intent Regarding National Flood Insurance;
    - D) Certification Regarding Project Site, Rights-of-Way, Easements and Permits; and
    - E) Authorization of a Representative to Sign Loan Documents;
  - 2) An approved project plan in accordance with Section 662.510 (Loan Applicant's Responsibilities During Project Planning) of this Part;
  - 3) A completed Financial Information Checklist (Appendix B, Exhibit B), which will necessarily address the following requirements:
    - A) An enacted ordinance authorizing the bonds, notes or other evidence of indebtedness to be delivered to the Agency;
    - B) Proof of publication of the ordinance and any notice required by State statute, when applicable;
    - C) When applicable, an approved operation, maintenance and replacement revenue system in accordance with Section 662.910

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(Operation, Maintenance and Replacement Revenue System) of this Part;

D) Documentation to support the loan applicant's ability to repay the loan in accordance with Sections 662.620 (Financial Capability), 662.930 (Dedicated Source of Revenue for Local Government Units) and 662.935 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part;

E) A legal opinion from the loan applicant's legal counsel with respect to the validity and enforceability of the loan applicant's obligations and the absences of conflicts with other agreements, bonds or ordinances; and

F) A Tax Exemption Certificate and Agreement;

AGENCY NOTE: Guidance for loan applicants on the satisfaction of financial requirements detailed in subsections (a)(3)(A) through (F) is provided in Appendix B, Exhibit B.

- 4) Design documents, including plans and specifications, with a construction permit or "authorization to construct" from the Agency, pursuant to the provisions of Sections 14 through 17 or Sections 39 and 40 of the Environmental Protection Act [415 ILCS 5/14 through 17, 39 and 40], whichever is applicable;
- 5) A project completion schedule;
- 6) When necessary, an executed inter-governmental agreement necessary for project implementation;
- 7) An executed contract for design and construction related work in accordance with Section 662.630 (Contracts for Personal and Professional Services) of this Part if financing is being requested for these specific costs;
- 8) An EPA Form 4700-4, Compliance Report; and

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- 9) Any other executed legal agreements necessary for project implementation.
- b) In addition to the items identified in subsection (a), the Agency must have received a completed Bid Certification Forms (Appendix B, Exhibit C) and all other relevant attachments before it will issue the Loan Agreement. Key elements of the bid package that are required by the Bid Certifications Form include the following items:
- 1) A certified copy of the published bid advertisement or advertisements;
  - 2) The bid tabulations and selected bidder's proposal, along with a summary of any addenda issued by the loan applicant, if applicable;
  - 3) An analysis of the bids and recommendations for the award of the bids;
  - 4) The notice of the applicant's intent to award;
  - 5) A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33; and
  - 6) Certification from the loan applicant that all other bid requirements have been satisfied, including bid bond requirements, certifications and other legal documents required by State and federal law.

AGENCY NOTE: Guidance for loan applicants on the satisfaction of disadvantaged business enterprise requirements detailed in subsection (b)(5) can be found on the Agency's website at:  
<http://www.epa.state.il.us/water/forms.html#financial-assistance>.

- a) ~~In order to issue a loan commitment letter, the Agency must have received the following documents:~~
- 1) ~~A completed loan application form for financial assistance providing at a minimum the following items:~~
    - A) ~~Legal name of applicant;~~

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- B) ~~Address;~~
  - C) ~~Authorized representative name and title;~~
  - D) ~~Cost estimate;~~
  - E) ~~Amount requested for loan; and~~
  - F) ~~Verification and signature;~~
- 2) ~~An approved project plan in accordance with Section 662.510 (Loan Applicant's Responsibilities During Project Planning) of this Part;~~
- 3) ~~A Loan Program Certifications form that includes at a minimum the following:~~
- A) ~~The loan applicant must agree to pay all project costs not covered by the loan;~~
  - B) ~~The loan applicant must certify that it has analyzed the costs and the financial impacts of the proposed project and that it has the financial capability to repay the loan as well as the technical and managerial capacity to maintain compliance with the Safe Drinking Water Act;~~
  - C) ~~The loan applicant must certify that it is not aware of any unlawful or corrupt practices having taken place in the planning or design of the proposed project;~~
  - D) ~~The loan applicant must certify that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project;~~
  - E) ~~The loan applicant must certify that it is not barred from being awarded a contract or subcontract under the Illinois Procurement Code [30 ILCS 500]; and~~
  - F) ~~The loan applicant must provide its correct Federal Taxpayer Identification Number and certify that it is authorized to do~~

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~~business in the State of Illinois;~~

- 4) ~~A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C);~~
- 5) ~~An executed inter-governmental agreement necessary for project implementation, where necessary;~~
- 6) ~~A resolution, ordinance, or legal document authorizing a representative of the loan applicant to sign loan application documents;~~
- 7) ~~A certification of compliance with the Relocation and Real Property Acquisition Policies Act of 1970 (42 USC 4601) must be submitted by loan applicants that are local government units;~~
- 8) ~~A certification that the necessary project site, rights-of-way, easements and permits have been obtained;~~
- 9) ~~A resolution of intent to comply with the National Flood Insurance Act of 1968 (42 USC 4001-4127) in accordance with Section 662.940 (Floodplain Insurance) of this Part;~~
- 10) ~~An approved operation, maintenance and replacement revenue system in accordance with Section 662.910 (Operation, Maintenance and Replacement Revenue System) of this Part;~~
- 11) ~~Documentation to support the loan applicant's ability to repay the loan in accordance with Section 662.930 (Dedicated Source of Revenue For Local Government Units) of this Part or Section 662.935 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part;~~
- 12) ~~The construction drawings and specifications, suitable for bidding purposes;~~
- 13) ~~A construction permit application and permit or "authorization to construct" from the Agency, pursuant to the provisions of Sections 14 through 17 or Sections 39 and 40 of the Environmental Protection Act~~

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~~[415 ILCS 5/14 through 17, 39 and 40], whichever is applicable;~~

- ~~14) A project completion schedule;~~
  - ~~15) An executed contract for design and construction related work in accordance with Section 662.630 (Contracts for Personal and Professional Services) of this Part;~~
  - ~~16) An EPA Form 4700-4—Compliance Report;~~
  - ~~17) An enacted ordinance or other legally binding instrument authorizing the bonds, notes, security agreements or other evidence of indebtedness to be delivered to the Agency;~~
  - ~~18) Proof of publication of the ordinance and any notice required by State statute, where applicable;~~
  - ~~19) A legal opinion from the loan applicant's legal counsel with respect to the validity and enforceability of the loan applicant's obligations and the absence of conflicts with other agreements, notes, bonds or ordinances; and~~
  - ~~20) Any other executed legal agreements necessary for project implementation.~~
- b) In addition to the items identified in subsection (a) of this Section, the Agency must have received the following items before it will issue the actual Loan Agreement:
- ~~1) A certified copy of the published bid advertisement(s);~~
  - ~~2) Any addenda issued by the loan applicant, if applicable;~~
  - ~~3) The bidder's bid bond or cashier's check for not less than 5% of the total bid;~~
  - ~~4) The low bidder's certificate of nonsegregated facilities showing compliance with 18 USC 1001;~~

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

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.440 Fixed Loan Rate**

- a) The fixed loan rate is comprised of an interest rate and a loan support rate. The fixed loan rate charged for a PWSLPa public water supply facilities loan shall be a simple annual rate at one-half the market interest rate, ~~but not less than 2.50%.~~
- ~~b) Notwithstanding subsection (a), for the period of time that funds from the ARRA are available for loan commitment, the fixed loan rate charged for all loans from the PWSLP shall be a simple annual rate of 0.00%.~~
- b) Notwithstanding subsection (a), for federal fiscal years 2010 and 2011, extending through and including September 30, 2011, the fixed loan rate charged for all loans from the PWSLP shall be a simple annual rate of 1.25%.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.450 Refinancing**

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- a) Design costs set forth in Section 662.460 (Limitation on Design Cost) of this Subpart, and bidding costs related to eligible construction contracts incurred prior to the award of the loan agreement, are eligible for refinancing.
- b) Costs under a construction contract executed prior to the award of the loan agreement shall be eligible for refinancing only when the following conditions apply:
  - 1) The project is necessary to correct a health hazard determination, or the project is under an enforceable order to correct maximum contaminant level or treatment technique requirement violations, or project costs are associated with drilling and testing wells for source water quantity and quality; and
  - 2) The project costs in subsection (b)(1) were incurred and construction was initiated after July 17, 1997; and
  - 3) The loan applicant has received written approval from the Agency prior to the award of the construction contract.
- c) [Project costs refinanced shall receive the terms and interest rate available for the federal fiscal year that the loan agreement is issued.](#)

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.470 Limitation on Loan ~~Assistance~~Amount**

- a) [For each of federal fiscal years 2010 and 2011 extending through and including September 30, 2011, the amount of financial assistance from the PWSLP to a loan applicant cannot exceed total eligible project costs or \\$10,000,000, whichever is less. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.](#)
- b) [For federal fiscal years 2012 and beyond, the Director of the Agency shall establish the annual limitations on loan assistance prior to the beginning of each federal fiscal year by considering the status of the Fund, capitalization grant amounts, economic conditions and requirements established by USEPA.](#)

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AGENCY NOTE: Loan applicants and other interested parties will be provided access to the Director's draft decision, which will be provided on the Agency's website followed by a public hearing with a comment period before a final decision is rendered. The information will be provided at <http://www.epa.state.il.us/water/financial-assistance> or by telephone at 217/782-2027 and will be added to this rule.

~~The annual loan amount available to a loan recipient cannot exceed 25% of monies available for loans, unless the amount required for projects with approvable loan applications is less than the available funds for that fiscal year.~~

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

## SUBPART E: PROJECT PLANNING REQUIREMENTS FOR LOAN PROJECTS

**Section 662.510 Loan Applicant's Responsibilities During Project Planning**

- a) The loan applicant shall provide project planning, which shall consist of plans and studies that are directly related to the construction of public water supply facilities and/or other facilities that fulfill federal State Revolving Fund grant requirements for the green project reserve, to maintain compliance with applicable State and federal requirements as specified in 35 Ill. Adm. Code: Subtitle F and the federal Safe Drinking Water Act, while recognizing social, environmental, and economic conditions. The planning shall provide documentation on the need for the facilities for which loan assistance is being requested.
- a) The loan applicant shall:
- 1) ~~Undertake and complete project planning, which shall consist of plans and studies that are directly related to the construction of public water supply facilities, to maintain compliance with applicable State and federal requirements as specified in 35 Ill. Adm. Code, Subtitle F and the federal Safe Drinking Water Act;~~
  - 2) ~~Demonstrate to the Agency through its plans and studies the need for the facilities for which loan assistance is being requested; and~~
  - 3) ~~Demonstrate by a systematic evaluation of feasible alternatives that the proposed facilities represent the cost effective means of meeting~~

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~~applicable drinking water standards and goals, recognizing environmental and social conditions as set forth below.~~

- b) If any information required to be furnished as part of a project plan has been developed separately, it shall be furnished and incorporated by reference into the project plan. Planning previously or collaterally accomplished under local, State or federal programs may be utilized to the extent applicable.
- c) The project plan shall be submitted to the Agency for approval. Where applicable, the applicant shall also submit drafts of any legally enforceable agreements or demonstrations of legal authority necessary to plan implementation.
- d) The project plan may include more than one construction project and may provide the basis for several subsequent projects. The Agency shall review any project plan that has previously served as the basis for a loan, to determine if changes have occurred that require amendment of the plan for the subsequent project. If substantial changes have occurred that warrant revision or amendment of the plan as specified in Section 662.520 of this Subpart, the loan applicant shall revise or amend and resubmit it for Agency approval in accordance with Section 662.520(a) and (b).
- e) A project plan shall include the following elements in sufficient detail to, at minimum, comply with all applicable construction permit supporting data requirements of 35 Ill. Adm. Code 652.104:
  - 1) A complete description of the public water supply system or other system of which the proposed project is a part, identification of any existing violations of federal or State public water supply regulations, and identification of the needs to be addressed by the proposed project.
  - 2) A discussion of the technical, financial, ~~and managerial~~ and environmental considerations that form the basis for the applicant's selection of the recommended project ~~most effective project from the range of alternatives available and considered~~. When appropriate to the project scope, the following issues must be addressed:
    - A) The relationship of the nature, size and capacity of the selected ~~each~~ alternative to the needs to be served, including reserve capacity;

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- B) A discussion of the operational requirements of the selected each alternative and provisions for disposal of waste by-products in accordance with State requirements;
- ~~C)~~ ~~An assessment of the capability of each alternative to maintain compliance with drinking water standards;~~
- ~~CD)~~ An inventory of the relative environmental impacts of the selected of each alternative and a discussion of the measures that would be required during design and construction to mitigate or minimize negative environmental impacts; and
- ~~DE)~~ Adequate basis of design information for the selected each alternative to confirm the reasonability of cost estimates.;
- ~~F)~~ ~~A comparison of costs for each alternative, including both capital and operational costs over the design life of the facilities.~~
- 3) A detailed description of the alternative selected for loan assistance, including preliminary engineering data, complete cost estimates for design and construction, one or more 8.5 by 11 inch sites maps locating areas of construction and/or indirect impacts~~building~~, and a projected schedule for completion. The engineering data shall include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit capacities, etc., sufficient to demonstrate the project proposed will be designed in accordance with 35 Ill. Adm. Code 651 through 654.
- 4) Any required comments or approvals from relevant federal, State, interstate, regional or local agencies, including, at a minimum, comments from the Illinois Historic Preservation Agency and the Illinois Department of Natural Resources.
- 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for operating the facility and repayment of the proposed loan amount, as well as the impact of these costs on the system users.

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- 6) [Information sufficient to support a determination as to whether the project may qualify as water efficiency, energy efficiency, green infrastructure or environmental innovation.](#)

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.520 State Environmental Review**

- a) Prior to making a final determination on the acceptability of any project plan, the Agency shall undertake an environmental review. The Agency may categorically exclude certain classes of projects from environmental review when, by virtue of their limited scope, the projects have no potential for negative environmental impacts.
- b) The Agency shall not begin its environmental review until it has determined that the project plan conforms to the requirements of Section 662.510 (Loan Applicant's Responsibilities During Project Planning) of this Subpart, and that, based on the information available, all reasonable measures have been taken in the planning to avoid and mitigate negative environmental impacts.
- c) The scope of the Agency's environmental review shall include, but not be limited to, an assessment of the impacts of both the loan funded project and the overall planning on rare and endangered species, historic and cultural resources, prime agricultural land, air and water quality, recreational areas, wetlands, floodplains and other sensitive environmental areas. The review shall also assess the direct and indirect impacts of construction.
- d) For all projects requiring an environmental review, the Agency will assess the environmental impacts of the proposed project and prepare a written Preliminary Environmental Impacts Determination (PEID). The public will be given an opportunity to comment on the project plan and the Agency's environmental impacts assessment.
- e) The PEID shall be mailed to the loan applicant and other interested parties, inviting public comment. [The loan applicant shall hold a public hearing on the plan and the Agency's PEID for the purpose of obtaining public comments. The public hearing shall be held within 60 days after the receipt of the Agency's PEID or within an alternative time period that is justified by the loan applicant and approved by the Agency.](#) ~~Within 60 days after receipt of the Agency's preliminary~~

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~~determination, the loan applicant shall hold a public hearing on the plan and the Agency's PEID for the purpose of obtaining public comment.~~ The loan applicant shall allow an additional ~~1045~~ days from the date of the public hearing for the submission of written comments from the public.

- f) The time and place of the public hearing shall be conspicuously and adequately announced at least 10 days before the hearing. In addition, the Agency's PEID document shall be displayed at a convenient local site sufficiently prior to the hearing to obtain a level of public participation appropriate to the scope and impacts of the proposed project.
- ~~g) The loan applicant shall provide written notice of the public hearing to interested local, State and federal agencies, State and regional clearinghouses, citizen groups and local public officials.~~
- gh) The loan applicant shall provide the Agency with an accurate summary of all public comments received, together with any proposed amendments to the plan made in response to these comments.
- hi) Upon receipt of this public hearing summary and after the expiration of the ~~1045~~ day written comment period, the Agency shall issue:
- 1) An unconditional approval of the plan (original or as amended); or
  - 2) A conditional approval of the plan with special conditions; or
  - 3) A disapproval of the plan based on evidence of significant negative environmental impacts for which appropriate mitigative measures have not been identified; or
  - 4) A determination of the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (42 USC 4332). The Agency may change its disapproval to approval or conditional approval based on the recommendations of the EIS.
- ij) For projects categorically excluded from the environmental review process, the Agency shall provide to the applicant a Notice of Intent to Issue a Categorical Exclusion. The applicant shall publish the Agency Notice of Intent in a newspaper of local record, and provide public access to the planning documents

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[and the Agency Notice of Intent and allow 10 days for written public comment](#) ~~and allow 15 days for public comment.~~ If no valid objection is raised to the Categorical Exclusion, the Agency shall issue an unconditional approval of the project plan. Should valid concerns be raised over potential environmental impacts, the Agency shall proceed with an environmental review under this Section 662.520 or issue a conditional approval where the applicant incorporates mitigative measures that would clearly resolve the environmental concerns.

[jk](#)) Agency approval of a project plan shall be valid for purposes of loan funding for a period of 5 years, after which time the plan must be updated and resubmitted to the Agency for review and approval. The Agency shall prepare a revised environmental review and provide an opportunity for public comment.

[kl](#)) At any time within 5 years from the date of project plan approval, the Agency may rescind its approval and require the planning to be amended, if there are changes to the scope of proposed construction or significant alterations to planning area conditions or underlying assumptions that might alter previous conclusions regarding environmental impacts or [cost analyses](#) ~~cost effectiveness~~. For projects where the amended planning would result in substantial changes in environmental or economic impacts, the Agency may require public comment prior to granting approval of the amended plan.

[lm](#)) Additions to the project scope or changes to the location of proposed construction activity shall require an amendment to an approved project plan. Where the Agency determines that the proposed changes will not alter the previous environmental impacts findings, it will approve planning amendments by letter. In other cases, additional environmental review and public comment may be required.

[m#](#)) Agency project planning determinations made in accordance with [subsections](#) ~~subsection~~ [\(h\) and \(i\)](#) shall be subject to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

## SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

**Section 662.610 Requirements for Subagreements**

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

- a) **Local Preference**  
Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements under PWSLP loans.
- b) **Profits**  
Only fair and reasonable profits may be earned by contractors in subagreements under PWSLP loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 662.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.
- c) **Loan Recipient Responsibility**  
The loan recipient shall be responsible for the administration and successful accomplishment of the project for which PWSLP loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. Such an individual or firm shall be deemed the loan recipient's agent, and shall be subject to all the provisions of the loan agreement, including this Part 662, that apply to the loan recipient.
- d) **Privity of Contract**  
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts), or to any solicitation or request for proposals thereunder.
- e) **Subagreements shall:**

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- 1) Be directly related to the accomplishment of the loan recipient's approved work program;
  - 2) Be in the form of an executed written agreement (except for small purchases of \$25,000 or less);
  - 3) Be for monetary or in-kind consideration; and
  - 4) Not be in the nature of a grant or gift.
- f) Documentation
- 1) Procurement records and files for purchases in excess of \$25,000 shall include the following:
    - A) The basis for contractor selection;
    - B) The justification for lack of competition if competition appropriate to the type of project work to be performed is required but not obtained; and
    - C) The basis for award cost or price.
  - 2) Procurement documentation as described in subsection (f)(1) shall be retained by the loan recipient or contractors ~~contractor(s)~~ for the period required by Section 662.820 (Audit and Records) of this Part.
- g) Subagreements shall only be awarded to persons or organizations that:
- 1) Have adequate financial resources for performance;
  - 2) Have the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain these requirements;
  - 3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;

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- 4) Have a satisfactory record of integrity, judgment and performance;
  - 5) Have an adequate financial management system and audit procedure ~~that~~ which is consistent with auditing standards generally accepted in the United States of America~~generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards~~;
  - 6) Maintain a standard of procurement in accordance with this Part 662;
  - 7) Maintain a property management system ~~that~~ which provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
  - 8) Conform to the civil rights, equal employment opportunity (Appendix A, Exhibit D) and labor law requirements of this Part 662.
- h) Fraud and Other Unlawful or Corrupt Practices
- 1) The obtaining and administration of loans from the PWSLP, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks, and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.
  - 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices that are brought to its attention. The loan recipient shall advise the Agency immediately when any such allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any matter.
- i) Negotiation of Subagreements
- All subagreements greater than \$25,000 shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent and not be in

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conflict with other State statutes. Procurements may be negotiated by the loan recipient, if approved by the Agency, for the following reasons:

- 1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement); or
- 2) The materials or services to be procured are available from only one person or firm; or
- 3) The procurement is for personal or professional services, or for any services to be rendered by an educational institution; or
- 4) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or
- 5) The procurement is for material or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.620 Construction Contracts**

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

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured and the notice to proceed.
- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted under Section 662.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:

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- 1) Evidence of advertising  
The loan recipient shall submit to the Agency a certified copy of the bid advertisement ~~that which~~ notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the PWSLP as set out in this Part 662, the [Davis-Bacon Act \(40 USC 276a through 276a-5\)](#) as defined by the U.S. Department of Labor [Prevailing Wage Act \[820 ILCS 130\]](#), the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order No. 11246, as amended (Appendix A, Exhibit D).
- 2) Adequate bidding documents  
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
  - A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (Drawings and specifications may be made available for inspection instead of being furnished.);
  - B) The terms and conditions of the contract to be awarded;
  - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;
  - D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the PWSLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
  - E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan applicant;

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- F) A copy of subsections (b)(2)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;
- G) By submission of the bid each bidder certifies, and in the case of a joint bid each party thereto certifies as to his or her own organization, that in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
  - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
  - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33E of the Illinois Criminal Code of 1961 [720 ILCS 5/33E]; ~~and-~~
- H) Each person signing the bid shall certify that:
- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G); or
  - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that such persons have not participated, and will not participate, in any action contrary to subsection (b)(2)(G),

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and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G).

- 3) Addenda to bidding documents  
If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, it shall send written addenda to all firms who have obtained bidding documents, in time to be considered prior to the bid opening time. When appropriate, the period for submission of bids shall be extended. All addenda to the bidding documents should be submitted to the Agency for approval prior to the bid opening.
  - 4) Award to the low, responsive, responsible bidder
    - A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award and the loan applicant's letter of intent to award or the official minutes of board approval.
    - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan applicant.
    - C) If the award is intended to be made to a firm ~~that~~ which did not submit the lowest bid, prior to any award, the loan applicant shall submit to the Agency a written statement, explaining why each lower bidder was deemed not responsive or not responsible.
- c) Negotiations of Contract Amendments (Change Orders)
- 1) Loan recipient responsibility  
The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan

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recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:

- A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
  - B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
  - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
- 2) Changes in contract price or time  
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
- 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
- 4) Agency review  
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:
- A) A description of the changed work;
  - B) The contractor's proposal itemizing the cost and time to complete the changed work;
  - C) The recipient's or engineer's estimate of the cost and time to complete the changes;
  - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and

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- E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) Required Construction Contract Provisions  
Each construction contract shall include the following provisions:
- 1) Audit; access to records
- A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work in accordance with Generally Accepted Accounting Principles consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c), (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency, or any of their authorized representatives shall have access to the books, records, documents, and other evidence for purposes of inspection, audit, and copying. The contractor shall provide facilities for access and inspection.
- B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.
- C) Audits shall be in accordance with auditing standards generally accepted in the United States of America consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- D) The contractor shall agree to the disclosure of all information and

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reports resulting from access to records pursuant to subsection (d)(1)(A). Where the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of such dispute, appeal, litigation, claim, or exception.
- F) The right of access will generally be exercised with respect to financial records under:
- i) Negotiated prime contracts;
  - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
  - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
- G) The right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:
- i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
  - ii) If there is any indication that fraud, gross abuse, or corrupt

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practices may be involved in the award or performance of the contract or subcontract.

- 2) **Covenant against contingent fees**  
The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
  - 3) **Wage provisions**  
The contractor shall pay prevailing wages in accordance with the [Davis-Bacon Act \(40 USC 276a through 276a-5\) as defined by the U.S. Department of Labor](#)~~Illinois Prevailing Wage Act [820 ILCS 130]~~.
  - 4) **Disadvantaged business enterprise requirements**  
The contractor shall provide evidence, including but not limited to a copy of the ~~advertisement or advertisements~~ [advertisement\(s\)](#) and the record of negotiation that it has taken affirmative steps in accordance with 40 CFR 33, to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services consistent with the provisions of the Agency's Operating Agreement with USEPA.
  - 5) **Debarment and suspension provisions**  
The contract shall require the successful ~~bidders~~ [bidder\(s\)](#) to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
  - 6) **Nonsegregated facilities provisions**  
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) **Subcontracts under Construction Contracts**  
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall

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comply with the following:

- 1) All applicable provisions of federal, State and local law;
  - 2) All provisions of this Part 662 regarding fraud and other unlawful or corrupt practices;
  - 3) All provisions of this Part 662 with respect to access to facilities, records and audit of records.
  - 4) All provisions of subsection (d)(5) that require a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
- f) Contractor Bankruptcy  
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.630 Contracts for Personal and Professional Services**

All subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
  - 1) Evidence, such as, but not limited to, a copy of the [advertisement or advertisements advertisement\(s\)](#) and the record of negotiation in accordance with 40 CFR 33, that affirmative steps have been taken to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction, and services consistent with the provisions of the Agency's Operating Agreement with USEPA;

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- 2) An audit and access to records clause that provides as follows:
- A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
  - B) Books, records, documents and other evidence directly pertinent to performance of PWSLP loan work under this agreement shall be maintained in accordance with Generally Accepted Accounting Principles consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
  - C) Audits conducted pursuant to this provision shall be in accordance with auditing standards generally accepted in the United States of America generally accepted auditing standards.
  - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
  - E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for three years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 662.650 (Disputes) of this Subpart or litigation or the settlement of claims arising out of project performance or costs or items to which an audit exception has been taken, shall be maintained and made available for three years after the resolution of the appeal, litigation, claim or exception;
- 3) A "covenant against contingent fees" clause as follows:

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"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee";

- 4) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C);
  - 5) A description of the scope and extent of the project work;
  - 6) The schedule for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks; and
  - 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.
- c) If, at the time of contract execution, any of the elements required in this Section 662.630 cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

SUBPART H: REQUIREMENTS APPLICABLE TO ACCESS,  
AUDITING AND RECORDS

**Section 662.820 Audit and Records**

- a) The loan recipient shall maintain books, records, documents, reports, and other evidentiary material [in accordance with Generally Accepted Accounting](#)

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~~Principles and accounting procedures and practices consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards.~~

- b) For purposes of this Section 662.820 "records" shall include, but not be limited to:
- 1) Documentation of the receipt and disposition by the loan recipient of all financial assistance received for the project, including both State financial assistance and any matching share or cost sharing; and
  - 2) Documentation of the costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the loan has been provided.
- c) The loan recipient's facilities, or any facilities engaged in the performance of the PWSLP loan project, and the loan recipient's records shall be subject to inspection and audit by the Agency or its authorized representative, at the times specified in Section 662.810 (Access) of this Subpart.
- d) The loan recipient shall preserve and make its records available to the Agency or its authorized representative for the following periods:
- 1) For all costs associated with design and construction, for 3 years after final loan closing;
  - 2) For all other accounting records concerning the loan, for 3 years from the date of the transaction; and
  - 3) For any longer period required by law or by subsections (e) and (f).
- e) If the loan is completely or partially terminated, the records relating to the terminated work shall be preserved and made available for 3 years after any resulting final termination settlement.
- f) Records that relate to appeals under the "Disputes" clause, litigation or the settlement of claims arising out of the performance of the PWSLP loan project, or to project costs and expenses to which exception has been taken by the Agency or its authorized representatives, shall be retained until the appeals, litigation, claims, or exceptions have been completed.

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- g) Failure of the loan recipient or its contractors or subcontractors to make records available to the Agency as required by Section 662.810 (Access) of this Subpart after 10 days written notice shall be cause for termination of the loan pursuant to Section 662.330 (Termination) of this Part and for refund to the State of Illinois for deposit into the PWSLP of any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section 662.820 shall repay any loan funds previously spent.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

## SUBPART I: FINANCIAL AND MANAGERIAL CAPACITY

**Section 662.910 Operation, Maintenance and Replacement Revenue System**

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's source of revenue for operation, maintenance, and replacement (~~OM&R~~, ~~M&R~~) costs. The source of revenue must be enacted and enforceable, if appropriate, before the first loan disbursement can be made.
- b) The Agency shall approve the ~~OM&R~~ ~~O~~, ~~M&R~~ revenue system in accordance with the following criteria:
- 1) For the first year of operation of new facilities, operation, maintenance and replacement costs shall be based upon past experience or some other rational method that can be demonstrated to be applicable.
  - 2) The loan recipient shall review annually and revise periodically the revenue source to reflect actual water works operation, maintenance, and replacement costs. The Agency may request a report on the status of the projected costs, actual costs, revenue generated and fund balances at any time.
  - 3) The revenue source shall generate sufficient revenue to offset the cost ~~for~~ ~~of all water works~~ operation, maintenance and replacement required to be provided by the loan recipient for all water supplies or facilities as authorized under this Part.
  - 4) If the project is for a regional community water supply facility that

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distributes water to other public water supplies, appropriate municipal ordinances, intergovernmental or service agreements or other appropriate authorizations must be submitted.

- c) Upon approval of a loan recipient's ~~OM&R~~ OM&R revenue source, the implementation and maintenance of the source shall become a condition of the loan subject to Section 662.310 (Noncompliance with Loan Procedures) of this Part.
- d) The Agency or its authorized representative shall have access to all books, documents, papers, and records of the loan recipient for the purpose of making audit, examination, excerpts, and transcriptions in order to ensure compliance with subsection (b).

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.920 Financial Capability**

- a) The loan applicant shall demonstrate to the Agency that it has the necessary legal, financial, managerial and technical capability to:
  - 1) Construct, operate and maintain the project for the life of the ~~facility~~ public water supply facilities;
  - 2) Retire the loan, including the execution of any necessary legally enforceable agreements and any enactments necessary to recover adequate capital costs to repay the loan; and
  - 3) Meet any covenants and requirements in the loan agreement.
- b) To demonstrate financial, managerial and technical capability, the loan applicant shall, at a minimum, show that:
  - 1) It is empowered under law to own, operate and maintain ~~the facility~~ public water supply facility including the facilities to be constructed under the loan;
  - 2) It has the necessary easements, titles, permits and legally enforceable agreements for loan project implementation, as identified in the project

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plan; and

- 3) It has or will have the necessary qualified personnel to operate and maintain the facility.
- c) The financial capability demonstration shall be submitted to the Agency for approval and shall contain detailed project costs, existing and proposed operation, maintenance and replacement costs, existing and proposed local capital costs and, [upon request of the Agency](#), historical information over the past 3 years consisting of audited annual financial statements, tax returns, Illinois Commerce Commission annual reports, bond ratings, number of billed customers and tax rate levies.
- d) The Agency may suggest mitigative measures to improve the loan applicant's financial capability to undertake the project, including but not limited to acquisition of grant funding, reduction of project costs, additional or different sources of revenues, efforts to reduce the number of delinquent billed customers and changes to existing financial practices that may threaten generation of adequate revenues.
- e) The Agency may require a loan term of less than the 20 year maximum. In evaluating the appropriateness of alternative loan terms, the Agency shall consider such factors as the scope of the proposed project, the impacts of alternative loan terms on user fees, and the overall cost of the project.
- f) The Agency may also utilize available credit reporting services.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.930 Dedicated Source of Revenue for Local Government Units**

- a) A source of revenue shall be dedicated and pledged to make the loan repayments. Prior to loan approval, the Agency shall review the proposed dedicated and pledged revenue source to assure that it will generate revenues adequate to make the loan repayments and will provide a continuing source of revenue adequate to make loan repayments for the term of the loan. If the source of revenue is pledged in a subordinate position to a revenue bond ordinance, the covenants regarding coverage and reserve for the revenue source shall be equivalent to those in the revenue bond ordinance. At a minimum, the reserve account shall be equal

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to the annual principal and interest payment funded within 2 years after the loan award.

- b) The necessary legislative enactments to dedicate and pledge the source of revenue must be in place before the Agency can make the first loan disbursement.
- c) The loan recipient shall maintain a separate account in its books to record the dedicated revenues for loan repayment.
- d) The loan recipient shall, for the term of the loan, review and adjust the dedicated source of revenue as necessary to provide adequate funds for the repayment of the loan. The recipient shall timely notify ~~the Agency of, and submit to the Agency for approval,~~ all proposed changes to the dedicated source of revenue.
- e) Upon request, the loan recipient shall submit to the Agency a statement on the status of the account required by subsection (c) of this Section that contains the status of the dedicated revenue account, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review will be based on, but not limited to, ensuring that the dedicated source of revenue is legally authorized, generates sufficient revenue and is otherwise in accordance with this Part 662.
- f) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the dedicated revenue source and restructure it as necessary.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

## SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

**Section 662.1010 Determination of Allowable Costs**

The loan recipient shall be paid, upon request, in accordance with Section 662.1030 (Disbursement of Loan Funds) of this Subpart, for all costs that are within the scope of the approved project, not to exceed the total amount of the loan, and that are determined to be allowable in accordance with the following criteria:

- a) Allowable Project Costs  
All reasonable and necessary costs directly attributable to the design and

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construction of an eligible, loan assisted public water supply project, that are not excluded from loan funding by legislation or non-waivable regulations.

Categories of necessary costs include, but are not limited to, the following:

- 1) The direct purchase of materials, equipment and personal services specifically necessary for the completion of a loan funded project;
- 2) Professional and consultant services contracts necessary for design, bidding, and construction of a loan funded project, except as elsewhere limited by this Part 662;
- 3) Costs under approved construction contracts; and
- 4) Costs for premiums for required flood insurance during the project construction period.

b) Ineligible Costs

Categories of costs that are ineligible for loan assistance, and are not subject to the "reasonable and necessary" test of allowability include, but are not limited to, the following:

- 1) Costs for preparing a project planning document;
- 2) Costs outside the scope of the approved project plan;
- 3) Site acquisition, including easement compensation;
- 4) Construction of any facilities that do not clearly fall within the definition of a community water supply facility as contained in the federal Safe Drinking Water Act [or do not qualify in meeting the federal green project reserve requirements](#);
- 5) Costs of projects whose main purpose is fire protection or servicing future growth.

c) Disputes Concerning Allowable Costs

The loan recipient shall seek to resolve any questions relating to cost allowability or allocation at the earliest opportunity. Final determinations by the Director concerning the allowability of costs shall be conclusive.

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(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

**Section 662.1020 Use of Loan Funds and Payment of Unallowable Costs**

- a) Loan funds shall be expended solely for approved allowable costs incurred in the design and construction of the project.
- b) The loan recipient shall agree to pay the unallowable costs associated with the project, as well as all allowable costs that exceed the amount of the loan, and shall construct the project or cause it to be constructed to final completion in accordance with the plans and specifications and on the schedule approved by the Agency.
- c) The loan recipient shall commit itself to complete the construction of the [project operable public water supply facilities](#).

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

SUBPART K: PROCEDURES FOR LOAN REPAYMENT  
AND DELINQUENT REPAYMENT**Section 662.1110 Loan Repayment to the Agency**

Loan repayment to the Agency shall be in accordance with the loan repayment provisions contained in the loan agreement.

- a) Loan repayments shall commence not later than 6 months after the initiation of the loan repayment period and shall be due semi-annually for local government units [and other loan recipients meeting the federal green project reserve requirement](#) and quarterly for privately owned community water supplies unless the Agency determines that the source of revenue justifies an alternative repayment plan.
- b) After the initiation of the loan repayment period date in the loan agreement, the Agency shall set a principal amount and give the loan recipient an interim repayment schedule.
- c) After a final cost review of the project, the Agency shall establish the final

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principal amount and give the loan recipient a final repayment schedule.

(Source: Amended at 34 Ill. Reg. 17661, effective November 8, 2010)

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Section 662.APPENDIX B Loan Application Documents

Section 662.EXHIBIT A Loan Application Form

Applicant Information

L17# \_\_\_\_\_

1. Legal Name of Applicant: \_\_\_\_\_

2. Applicant Address: \_\_\_\_\_

Project Description: \_\_\_\_\_

Federal Employer Identification Number (FEIN)\*: \_\_\_\_\_

\* Submit FEIN Certification (Attached)

3. Authorized Representative:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

4. Engineer:

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

5. Attorney:

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

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6. Include detailed construction cost estimate in bid format as part of this application and summarize below:

<u>Construction</u>	\$
<u>Legal/Financial</u>	\$
<u>Design Engineering</u>	\$
<u>Construction Engineering</u>	\$
<u>Other</u>	\$
<u>Contingency</u>	\$
	<hr/>
<u>Total</u>	\$

7. Amount requested for loan \$ \_\_\_\_\_

8. Loan repayment period requested (maximum term is 20 years): \_\_\_\_\_

20 Years

Other (\_\_\_\_\_ number of years)

9. List any other proposed sources of funding in addition to loan request:

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Date Available: \_\_\_\_\_

10. Project Schedule (Indicate "complete" or anticipated date of completion as appropriate)

a) Approved Project Planning: \_\_\_\_\_

b) Plans and Specifications completed and submitted to Illinois EPA: \_\_\_\_\_

c) Illinois EPA Permit issued: \_\_\_\_\_

d) Approved Operation, Maintenance and Replacement Revenue System and Dedicated Source of Revenue: \_\_\_\_\_

e) Advertise for Bids: \_\_\_\_\_

f) Initiation of Construction: \_\_\_\_\_

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g) Completion of Construction: \_\_\_\_\_

**Loan Program Certifications**

- Whereas, the application provisions for loans from the Public Water Supply Loan Program require that the loan applicant provide the following certifications and assurances:

The loan applicant hereby agrees to pay all project costs not covered by the loan. If the project costs provided by the applicant exceed the lesser of 5% of the total project cost or \$100,000, please provide the following information:

Amount to be provided by applicant \$ \_\_\_\_\_

Source of funds \_\_\_\_\_

- The loan applicant hereby certifies that it has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the proposed project.
- The loan applicant hereby certifies that no unlawful or corrupt practice has taken place in the planning or design of the proposed project.
- The loan applicant hereby certifies that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project.
- The loan applicant hereby certifies that it is not barred from being awarded a contract or subcontract under Section 10.1 of the Illinois Purchasing Act.

**Certification Regarding Debarment, Suspension and Other Responsibility Matters**

The prospective participant certifies, to the best of its knowledge and belief, that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

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- b) Have not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

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**INTENT REGARDING NATIONAL FLOOD INSURANCE**

Whereas application provisions for loans from the Public Water Supply Loan Program require compliance with the National Flood Insurance Act of 1968, as amended, and

Whereas the costs of securing and maintaining flood insurance are eligible for loan participation during the approved construction period, and

Whereas failure to secure flood insurance for eligible construction located in designated flood hazard areas will cause this construction to become ineligible for loan funds:

Now therefore, be it resolved that the \_\_\_\_\_ of \_\_\_\_\_ will cooperate and coordinate with the National Flood Insurance Program to acquire and maintain any flood insurance made available for Project L17# \_\_\_\_\_ for the entire useful life of the insurable construction pursuant to the National Flood Insurance Act of 1968, as amended, and that it will secure said flood insurance for each insurable structure, as soon as said insurance is available, and will notify the Illinois Environmental Protection Agency in writing that the National Flood Insurance requirement has been satisfied.

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**CERTIFICATION REGARDING PROJECT SITE, RIGHTS-OF-WAY, EASEMENTS, AND PERMITS**

1. The applicant has investigated and ascertained the location of the site or sites, rights-of-way, and easements being provided for the facilities in its application for loan assistance. In my opinion, the applicant has a sufficient legal interest in the site or sites, rights-of-way, and easements to permit the building of such facilities thereon and to permit the operation and maintenance of such facilities thereon during the estimated life of the facility by the applicant after the completion of construction.
2. The loan applicant has complied with the provisions of 49 CFR 24 as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601 et seq.).
3. The loan applicant has obtained all the necessary permits as indicated below:

<u>Type of Permit</u>	<u>Permit Number</u>	<u>Date Issued</u>
<u>Army Corps of Eng. 404</u>	_____	_____
<u>IL Dept. of Trans.</u>	_____	_____
<u>County Highway</u>	_____	_____
<u>Other</u>	_____	_____

**AUTHORIZATION OF A REPRESENTATIVE TO SIGN LOAN DOCUMENTS**

Whereas, application provisions for loans from the Public Water Supply Loan Program require that the \_\_\_\_\_ (name of applicant) of \_\_\_\_\_ (address) authorize a representative to sign the loan application forms and supporting documents; therefore, be it resolved by the \_\_\_\_\_ (name of applicant) of \_\_\_\_\_ (address) that \_\_\_\_\_ (name or title) is hereby authorized to sign all loan application forms and documents.

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I, \_\_\_\_\_ hereby verify that the above information is, to the best of my knowledge, true and correct.

Date: \_\_\_\_\_ Signed by: \_\_\_\_\_

(Authorized Representative)

Title: \_\_\_\_\_

Attested by: \_\_\_\_\_

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**TAXPAYER IDENTIFICATION NUMBER**

I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a U.S. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.
- If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
- If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.
- If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

or

Employer Identification Number \_\_\_\_\_

Legal Status (check one):

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- |   |   |
|---|---|
| <input type="checkbox"/> <a href="#">Individual</a>   | <input type="checkbox"/> <a href="#">Governmental</a>   |
| <input type="checkbox"/> <a href="#">Sole Proprietor</a>  | <input type="checkbox"/> <a href="#">Nonresident alien</a>  |
| <input type="checkbox"/> <a href="#">Partnership</a>  | <input type="checkbox"/> <a href="#">Estate or trust</a>  |
| <input type="checkbox"/> <a href="#">Legal Services Corporation</a>   | <input type="checkbox"/> <a href="#">Pharmacy (Non-Corp.)</a>   |
| <input type="checkbox"/> <a href="#">Tax-exempt</a>   | <input type="checkbox"/> <a href="#">Pharmacy/Funeral Home/Cemetery (Corp.)</a>                           |
| <input type="checkbox"/> <a href="#">Corporation providing or billing medical and/or health care services</a>     | <input type="checkbox"/> <a href="#">Limited Liability Company (select applicable tax classification)</a> |
| <input type="checkbox"/> <a href="#">Corporation NOT providing or billing medical and/or health care services</a> | <input type="checkbox"/> <a href="#">D = disregarded entity</a>   |
|   | <input type="checkbox"/> <a href="#">C = corporation</a>  |
|   | <input type="checkbox"/> <a href="#">P = partnership</a>  |

[Signature:](#) \_\_\_\_\_ [Date:](#) \_\_\_\_\_

(Source: Added at 34 Ill. Reg. 17661, effective November 8, 2010)

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Section 662.APPENDIX B Loan Application Documents

Section 662.EXHIBIT B Program Financial Requirements

Loan Applicant: \_\_\_\_\_

Loan Number: \_\_\_\_\_

Please answer or submit information indicated, as appropriate.

A. Dedicated Source of Revenue

1.  Home Rule       Non-Home Rule

2. Type of loan instrument

a.  General Obligation Debt

b.  Alternate (double barreled) bonds with property tax levy that pledges an alternate revenue source of \_\_\_\_\_

c.  Water     Sewer     Combined System Revenues – Senior Lien

d.  Water     Sewer     Combined System Revenues – Subordinate Lien

3. Authority of applicant to issue debt

a.  Home rule powers

b.  Specific authorizing statute: \_\_\_\_\_ ILCS \_\_\_\_\_

c.  Other (specify) \_\_\_\_\_

4. Please submit a copy of the certified ordinance authorizing the debt to be incurred, along with existing ordinances if a subordinate lien is proposed. If this is a subordinate lien, the certified ordinance authorizing debt must have provisions for equivalent accounts and coverage.

5. Please submit a signed legal opinion with respect to the validity and enforceability of the applicant's obligations (the bond ordinance) and the absence of conflicts with other agreements, bonds or ordinances.

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6. Please submit a detailed demonstration that the dedicated source of revenue will provide adequate revenues to repay the loan in accordance with the terms of the loan agreement, including meeting any covenants and requirements in the loan agreement.

Please complete **EITHER** Section B. or Section C., as appropriate:

**B.** Water Revenue System (complete tasks if an Agency approved water revenue system IS NOT in place)

1. Please submit a detailed Operation, Maintenance and Replacement (OM&R) budget.
2. Please provide calculations to demonstrate how the rates and surcharges are calculated. The rates should be expressed in cost per unit of usage, i.e., per 1,000 gallons, per 100 cubic feet, as appropriate).
3. Please submit copies of certified water use and water rate ordinances.

**C.** Supplemental Review (complete tasks if an Agency approved water revenue system IS in place)

1. Please provide a statement certifying that the water use and water rate ordinances originally approved are in place and being enforced. The certification should also address the following questions:
  - a. Is an annual review of the Water Revenue System and water/other service charges being performed?
  - b. Is the Water Revenue System generating sufficient revenue to recover the Operation, Maintenance and Replacement (OM&R) Costs?
  - c. Will this project result in substantial changes to the costs for Operation, Maintenance and Replacement?

Include ordinance numbers and effective dates, and please reference any amendments made to the ordinances since their approval.

2. If the project will result in substantial changes in costs for Operation, Maintenance and Replacement, please submit a proposed budget for the first year OM&R costs and a

## ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED AMENDMENTS

review of water/other service charges, along with necessary revisions to the rate ordinance when appropriate.

D. Tax Exemption Certificate and Agreement

1. Please provide a signed copy of the Tax Exemption Certificate and Agreement. This document can be accessed on the Agency's website at: <http://www.epa.state.il.us/water/forms.html#financial-assistance> or by telephone at 217/782-2027.

2. Are other entities substantially benefiting (greater than 5%) from the project?

Yes       No

Please submit copies of any applicable service agreements with substantial beneficiaries.

I hereby certify that the above information is, to the best of my knowledge, true and accurate.

\_\_\_\_\_  
(Authorized Representative)

\_\_\_\_\_  
(Date)

**Financial Information Requirements**

Prior to the issuance of a loan agreement, the loan applicant must provide detailed and sufficient information to allow the Agency to determine that the applicant (1) is financially capable, (2) has pledged a Dedicated Source of Revenue that is adequate to retire the debt and meet any covenants and requirements in the loan agreement, and (3) has established a Water Use and Water Revenue System, when applicable, that will generate adequate revenues to repay the loan and accommodate costs for operation, maintenance and replacement of the facilities to be constructed.

These financial information requirements can generally be accomplished by completing the Financial Information Checklist above, which will necessarily involve the enactment of an ordinance or other legal instrument authorizing the debt to be incurred, and the development and enactment of an ordinance or other legal instrument establishing a Water Use System and Water

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Revenue System, when applicable. If a Water Revenue System has been previously approved by the Agency, evidence will be required to assure that the system has been adequately maintained, is being enforced and will continue to produce adequate revenues.

This brief summary of PWSLP loan rules, Agency review procedures, and information that must be submitted for the Agency's review is being provided along with the Financial Information Checklist above to provide guidance for potential loan recipients.

#### Financial Capability

The Agency will require the loan applicant to demonstrate that it has the legal, financial, managerial and institutional capability to retire the loan and to construct, operate and maintain the project for the life of the facilities to be constructed. The applicant must also demonstrate the ability to meet any covenants contained in the loan agreement.

The Agency's Financial Capability review will be conducted using items submitted as part of the loan application, including our review of the Dedicated Source of Revenue and the Water Revenue System as detailed below. If the Agency is unable to make a Financial Capability determination based on the loan application, the submission of additional financial data, including audited financial statements, may be required.

#### Dedicated Source of Revenue

The Agency will require that a specific source(s) of revenue be dedicated and pledged to make the loan repayments. Prior to the Agency's approval of the dedicated source(s) of revenue, the applicant must demonstrate that the pledged revenue source(s) will generate adequate revenues to make loan repayments for the term of the loan. The term of the loan will be specified in the loan agreement, but shall not exceed 20 years from the initiation of operation date contained in the loan agreement. Additional points that must be considered during the development of the dedicated source of revenue are:

- The dedicated source of revenue is usually pledged by the loan applicant in the form of an adopted ordinance that pledges a specific and dedicated source of revenue for repayment of the loan. The adopted ordinance will in most cases pledge a very stable source of revenue, such as revenues of the system, in the form of a revenue bond. General obligation and alternate bond ordinances are also acceptable. The loan applicant will be responsible for meeting all publication requirements, including publication of the Notice of Intent to Borrow Funds and Right to File a Petition, when applicable.

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- In the case of revenue bonds, the Agency will require that debt service coverage requirements for the IEPA loan be equal to any outstanding senior debt that is payable from revenues of the system, or from other revenues that are pledged for repayment of the loan. If a Water Revenue System is used, the rate ordinance and the rates must be adopted prior to first disbursement on the loan. State law requires a 1.25 x coverage test for alternate bonds, and parity revenue bonds must also meet the covenants made to outstanding investors.
- The Agency will require the loan applicant to furnish a legal opinion verifying the legality and acceptability of the ordinance and other elements of the debt instrument selected for repayment of the loan. This opinion will necessarily address the validity and enforceability of the loan recipient's obligations and the absence of conflicts with other agreements, bonds or ordinances. Retention of bond counsel is optional.

Water Revenue System

The Agency will require the loan applicant to establish a Water Revenue System, or alternative revenue collection system that will generate adequate revenues to make loan repayments for the term of the loan and to accommodate costs for operation, maintenance and replacement of the facilities to be constructed. The establishment of a Water Revenue System is generally accomplished by the development and enactment of an ordinance establishing a Water Use and Water Revenue Rate System to govern terms and charges for use of the system. If alternative revenue sources (not system revenues) will be dedicated to the project, other appropriate legal instruments will be required to secure a revenue stream and ensure debt service on the loan.

If the applicant has a previously approved Water Revenue System, the Agency will review the system to ascertain that the system was enacted and has been maintained in accordance with the previous approval and that it will continue to produce adequate revenues for the proposed project.

(Source: Added at 34 Ill. Reg. 17661, effective November 8, 2010)

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Section 662.APPENDIX B Loan Application Documents

Section 662.EXHIBIT C Bid Certifications Form

Loan Applicant: \_\_\_\_\_

Loan Number: \_\_\_\_\_

Please answer or submit information indicated, as appropriate.

1. Please submit evidence of advertising, including a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the PWSLP as set out in this Part 662, the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], the Disadvantaged Business Enterprise program requirements (40 CFR 33) and Executive Order 11246, as amended (Appendix A, Exhibit D) (reference Section 662.620(b)(1)).

a. The advertisement was placed in the: \_\_\_\_\_ newspaper\*

\* "Key" newspaper required (reference DBE Guidance at: <http://www.epa.state.il.us/water/forms.html#financial-assistance>)

b. The advertisement was placed on: \_\_\_\_\_ (date)

c. The date of bid opening is: \_\_\_\_\_

d. Bid holding period is: \_\_\_\_\_ days

2. Please submit the bid tabulation and the selected bidder's proposal (bid form only) reflecting any addenda issued during the bidding period (reference Section 662.620(b)).

a. Number of bids received: \_\_\_\_\_

b. Low/High range for base bids: \_\_\_\_\_ to \_\_\_\_\_

c. Is the loan recipient awarding to the lowest responsive, responsible bidder?

Yes  No

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If not, please submit justification disqualifying the apparent lowest bidder (reference [Section 662.620\(b\)\(4\)\(C\)](#)).

d. Are there appeals or protests? Please answer yes or no: \_\_\_\_\_

3. Please list and provide a summary of any addenda issued during the bidding period. The summary should reflect any change to major equipment or suppliers in the proposal and any alternates (deductive/additive) to be used in the project. Please include a statement that applicable addenda and alternates (deductive/additive) have been approved by the Agency's Permit Section.

4. Please submit the consultant's analysis of bids and recommendation for award (reference [Section 662.620\(b\)\(2\)\(c\)](#)).

5. Please submit the loan applicant's letter of intent to award or the official minutes of board approval for the award (reference [Section 662.620\(b\)\(4\)\(A\)](#)).

6. Please submit a summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33. Guidance for loan applicants on DBE requirements can be found on the Agency's website at <http://www.epa.state.il.us/water/forms.html#financial-assistance>. At a minimum, the loan applicant shall submit completed and signed copies of Forms 6100-3 (DBE Subcontractor Performance Form) and 6100-4 (DBE Subcontractor Utilization Form) if DBE inquiries are received on the project.

7. Bid Certifications – By submission of these bids and by certification provided hereunder, the loan applicant certifies that, to the best of its knowledge and belief, it and its principals have read and understand the various requirements pertaining to bids as embodied in these loan rules and that the specific certifications detailed below are provided by submission of these bids.

8. Contractor Certifications – Completed copies of three additional certifications must be executed by the selected contractor and submitted by the loan applicant, including a Certification of Non-Segregated Facilities, a Bidder Certification in Compliance with Article 33E to the "Criminal Code of 1961" and a Certification Regarding Debarment, Suspension and Other Responsibility Matters. Forms acceptable for this purpose are provided in this package below.

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**Bid Certifications**

- \_\_\_\_\_ • The loan applicant hereby certifies that the bidding documents include: a complete statement of the work to be performed, including necessary drawings and a required completion schedule; the terms and conditions of the contract to be awarded; a clear explanation of the method of bidding, the method for evaluation of bid prices and the basis and method for award of the contract; a statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the PWSLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract; and a summary of responsibility requirements or criteria that may be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan recipient.
- \_\_\_\_\_ • The loan applicant hereby certifies that the certifications contained in Section 662.620(b)(2)(G) and (H) are included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid.
- \_\_\_\_\_ • The loan applicant hereby certifies that the proposal is consistent with approved specifications in terms of quantity, description and eligibility.
- \_\_\_\_\_ • The loan applicant hereby certifies that any addenda issued during the bidding period were distributed to all prospective bidders and approved by the Agency.
- \_\_\_\_\_ • The loan applicant hereby certifies that a bid bond or cashier's check for not less than five percent (5%) of the bid amount and signed power of attorney is provided (reference Section 662.620(a)).
- \_\_\_\_\_ • The loan applicant hereby certifies that any change to major equipment or suppliers on the proposal has been approved by the Agency (Permit Section), that alternates (deductive/additive) taken have been approved by the Agency (Permit Section) and that an approved Permit # \_\_\_\_\_ is in place for the project.
- \_\_\_\_\_ • The loan applicant hereby certifies that a list of all subcontractors being utilized on the project will be maintained in the project file and made available for

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inspection upon request. The subcontractors list should include a name, address and telephone number for all subcontractors being used.

I hereby certify that the above information, including all certifications provided to comply with the procedures for issuing loans from the PWSLP, is, to the best of my knowledge, true and accurate.

\_\_\_\_\_  
(Authorized Representative)

\_\_\_\_\_  
(Date)

**Contractor Certifications**

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**CERTIFICATION OF NONSEGREGATED FACILITIES**

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 that are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he or she does not maintain or provide for his or her employees any segregated facilities at any of his or her establishments, and that he or she does not permit his or her employees to perform their services at any location, under his or her control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he or she will not maintain or provide for his or her employees any segregated facilities at any of his or her establishments, and that he or she will not permit his or her employees to perform their services at any location, under his or her control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise. The federally assisted construction contractor agrees that (except when he or she has obtained identical certifications from proposed subcontractors for specific time periods) he or she will obtain identical certifications from

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proposed subcontractors prior to the award of subcontracts exceeding \$10,000 that are not exempt from the provisions of the Equal Opportunity clause, and that he or she will retain such certification in his or her files.

Signature

Date

Name and Title of Signer (Please type)

Firm Name

NOTE: The penalty for making false statements in offers is prescribed in 18 USC 1001.

Bidder Certification  
In Compliance with Article 33E to the  
Criminal Code of 1961

I, \_\_\_\_\_, do hereby certify that:

Name

1. I am \_\_\_\_\_ of the \_\_\_\_\_

Position

Firm

and have authority to execute this certification on behalf of the firm.

2. This firm is not barred from bidding on this contract as a result of a violation of either Section 33E-3, Bid-rigging, or Section 33E-4, Bid Rotating, as set forth in Article 33E to the Criminal Code of 1961.

Name of Firm

Signature

Title

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Date \_\_\_\_\_

Corporate Seal (when appropriate)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who, being

(Name)

duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by \_\_\_\_\_ to execute the affidavit and did so

(Name of Firm)

as his or her free act and deed.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Commission Expires)

Notary Seal

EPA Project Control #: \_\_\_\_\_

United States Environmental Protection Agency  
Washington DC 20460

**Certification Regarding Debarment, Suspension and Other Responsibility Matters**

The prospective participant certifies, to the best of its knowledge and belief, that it and its principals:

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- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b) Have not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

\_\_\_\_\_  
(Typed Name & Title of Authorized Representative)

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Date)

I am unable to certify the above statements. My explanation is attached.

(Source: Added at 34 Ill. Reg. 17661, effective November 8, 2010)

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill. Adm. Code 148
- 3) Section Numbers:                      Adopted Action:  
     148.117                                      Amendment  
     148.126                                      Amendment  
     148.295                                      Amendment  
     148.462                                      New Section
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Effective Date of Amendments: November 8, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any materials incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: January 15, 2010; 34 Ill. Reg. 691
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences Between Proposal and Final Version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were required.
- 13) Will these amendments replace any emergency amendments currently in effect? No
- 14) Are there any other amendments pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
148.20	Amendment	34 Ill. Reg. 10665; July 30, 2010
148.25	Amendment	34 Ill. Reg. 10665; July 30, 2010
148.140	Amendment	34 Ill. Reg. 10665; July 30, 2010
148.120	Amendment	34 Ill. Reg. 15705; October 15, 2010

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

148.122                      Amendment                      34 Ill. Reg. 15705; October 15, 2010

- 15) Summary and Purpose of Amendments: This rulemaking adopts changes to methods and standards for setting certain payment rates for hospital supplemental payments. In addition, changes are made pursuant to implementation of the State fiscal year 2010 budget and changes required by Public Act 096-0821. These amendments also include new one time supplemental hospital payments, as well as modifications to existing supplemental payments.

The expected budgetary impact of this rulemaking is \$139 million in State fiscal year 2010. \$120.3 million are one-time payments in 2010, while \$18.6 million will be paid each year in State fiscal years 2010 through 2012.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Jeanette Badrov  
General Counsel  
Illinois Department of Healthcare and Family Services  
201 South Grand Avenue East, 3<sup>rd</sup> Floor  
Springfield IL 62763-0002

217/782-1233

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

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 89: SOCIAL SERVICES

## CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## SUBCHAPTER d: MEDICAL PROGRAMS

## PART 148

## HOSPITAL SERVICES

## SUBPART A: GENERAL PROVISIONS

## Section

148.10	Hospital Services
148.20	Participation
148.25	Definitions and Applicability
148.30	General Requirements
148.40	Special Requirements
148.50	Covered Hospital Services
148.60	Services Not Covered as Hospital Services
148.70	Limitation On Hospital Services

## SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

## Section

148.80	Organ Transplants Services Covered Under Medicaid (Repealed)
148.82	Organ Transplant Services
148.85	Supplemental Tertiary Care Adjustment Payments
148.90	Medicaid Inpatient Utilization Rate (MIUR) Adjustment Payments
148.95	Medicaid Outpatient Utilization Rate (MOUR) Adjustment Payments
148.100	Outpatient Rural Hospital Adjustment Payments
148.103	Outpatient Service Adjustment Payments
148.105	Psychiatric Adjustment Payments
148.110	Psychiatric Base Rate Adjustment Payments
148.112	High Volume Adjustment Payments
148.115	Rural Adjustment Payments
148.117	Outpatient Assistance Adjustment Payments
148.120	Disproportionate Share Hospital (DSH) Adjustments
148.122	Medicaid Percentage Adjustments
148.126	Safety Net Adjustment Payments
148.130	Outlier Adjustments for Exceptionally Costly Stays
148.140	Hospital Outpatient and Clinic Services

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 148.150 Public Law 103-66 Requirements
- 148.160 Payment Methodology for County-Owned Hospitals in an Illinois County with a Population of Over Three Million
- 148.170 Payment Methodology for Hospitals Organized Under the University of Illinois Hospital Act
- 148.175 Supplemental Disproportionate Share Payment Methodology for Hospitals Organized Under the Town Hospital Act
- 148.180 Payment for Pre-operative Days, Patient Specific Orders, and Services Which Can Be Performed in an Outpatient Setting
- 148.190 Copayments
- 148.200 Alternate Reimbursement Systems
- 148.210 Filing Cost Reports
- 148.220 Pre September 1, 1991, Admissions
- 148.230 Admissions Occurring on or after September 1, 1991
- 148.240 Utilization Review and Furnishing of Inpatient Hospital Services Directly or Under Arrangements
- 148.250 Determination of Alternate Payment Rates to Certain Exempt Hospitals
- 148.260 Calculation and Definitions of Inpatient Per Diem Rates
- 148.270 Determination of Alternate Cost Per Diem Rates For All Hospitals; Payment Rates for Certain Exempt Hospital Units; and Payment Rates for Certain Other Hospitals
- 148.280 Reimbursement Methodologies for Children's Hospitals and Hospitals Reimbursed Under Special Arrangements
- 148.285 Excellence in Academic Medicine Payments
- 148.290 Adjustments and Reductions to Total Payments
- 148.295 Critical Hospital Adjustment Payments (CHAP)
- 148.296 Tertiary Care Adjustment Payments
- 148.297 Pediatric Outpatient Adjustment Payments
- 148.298 Pediatric Inpatient Adjustment Payments
- 148.300 Payment
- 148.310 Review Procedure
- 148.320 Alternatives
- 148.330 Exemptions
- 148.340 Subacute Alcoholism and Substance Abuse Treatment Services
- 148.350 Definitions (Repealed)
- 148.360 Types of Subacute Alcoholism and Substance Abuse Treatment Services (Repealed)
- 148.368 Volume Adjustment (Repealed)
- 148.370 Payment for Subacute Alcoholism and Substance Abuse Treatment Services

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

148.380	Rate Appeals for Subacute Alcoholism and Substance Abuse Treatment Services (Repealed)
148.390	Hearings
148.400	Special Hospital Reporting Requirements
148.402	Medicaid Eligibility Payments (Repealed)
148.404	Medicaid High Volume Adjustment Payments (Repealed)
148.406	Intensive Care Adjustment Payments (Repealed)
148.408	Trauma Center Adjustment Payments (Repealed)
148.410	Psychiatric Rate Adjustment Payments (Repealed)
148.412	Rehabilitation Adjustment Payments (Repealed)
148.414	Supplemental Tertiary Care Adjustment Payments (Repealed)
148.416	Crossover Percentage Adjustment Payments (Repealed)
148.418	Long Term Acute Care Hospital Adjustment Payments (Repealed)
148.420	Obstetrical Care Adjustment Payments (Repealed)
148.422	Outpatient Access Payments (Repealed)
148.424	Outpatient Utilization Payments (Repealed)
148.426	Outpatient Complexity of Care Adjustment Payments (Repealed)
148.428	Rehabilitation Hospital Adjustment Payments (Repealed)
148.430	Perinatal Outpatient Adjustment Payments (Repealed)
148.432	Supplemental Psychiatric Adjustment Payments (Repealed)
148.434	Outpatient Community Access Adjustment Payments (Repealed)
148.440	High Volume Adjustment Payments
148.442	Inpatient Services Adjustment Payments
148.444	Capital Needs Payments
148.446	Obstetrical Care Payments
148.448	Trauma Care Payments
148.450	Supplemental Tertiary Care Payments
148.452	Crossover Care Payments
148.454	Magnet Hospital Payments
148.456	Ambulatory Procedure Listing Increase Payments
148.458	General Provisions
148.460	Catastrophic Relief Payments
<a href="#">148.462</a>	<a href="#">Hospital Medicaid Stimulus Payments</a>

## SUBPART C: SEXUAL ASSAULT EMERGENCY TREATMENT PROGRAM

Section	
148.500	Definitions
148.510	Reimbursement

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

## SUBPART D: STATE CHRONIC RENAL DISEASE PROGRAM

## Section

148.600	Definitions
148.610	Scope of the Program
148.620	Assistance Level and Reimbursement
148.630	Criteria and Information Required to Establish Eligibility
148.640	Covered Services

148.TABLE A	Renal Participation Fee Worksheet
148.TABLE B	Bureau of Labor Statistics Equivalence
148.TABLE C	List of Metropolitan Counties by SMSA Definition

AUTHORITY: Implementing and authorized by Articles III, IV, V and VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Sections 148.10 thru 148.390 recodified from 89 Ill. Adm. Code 140.94 thru 140.398 at 13 Ill. Reg. 9572; Section 148.120 recodified from 89 Ill. Adm. Code 140.110 at 13 Ill. Reg. 12118; amended at 14 Ill. Reg. 2553, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 11392, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 15358, effective September 13, 1990; amended at 14 Ill. Reg. 16998, effective October 4, 1990; amended at 14 Ill. Reg. 18293, effective October 30, 1990; amended at 14 Ill. Reg. 18499, effective November 8, 1990; emergency amendment at 15 Ill. Reg. 10502, effective July 1, 1991, for a maximum of 150 days; emergency expired October 29, 1991; emergency amendment at 15 Ill. Reg. 12005, effective August 9, 1991, for a maximum of 150 days; emergency expired January 6, 1992; emergency amendment at 15 Ill. Reg. 16166, effective November 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 18684, effective December 23, 1991; amended at 16 Ill. Reg. 6255, effective March 27, 1992; emergency amendment at 16 Ill. Reg. 11335, effective June 30, 1992, for a maximum of 150 days; emergency expired November 27, 1992; emergency amendment at 16 Ill. Reg. 11942, effective July 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14778, effective October 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19873, effective December 7, 1992; amended at 17 Ill. Reg. 131, effective December 21, 1992; amended at 17 Ill. Reg. 3296, effective March 1, 1993; amended at 17 Ill. Reg. 6649, effective April 21, 1993; amended at 17 Ill. Reg. 14643, effective August 30, 1993; emergency amendment at 17 Ill. Reg. 17323, effective October 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 3450, effective February 28, 1994; emergency amendment at 18 Ill. Reg. 12853, effective August 2, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 14117, effective September 1, 1994; amended at 18 Ill. Reg. 17648,

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effective November 29, 1994; amended at 19 Ill. Reg. 1067, effective January 20, 1995; emergency amendment at 19 Ill. Reg. 3510, effective March 1, 1995, for a maximum of 150 days; emergency expired July 29, 1995; emergency amendment at 19 Ill. Reg. 6709, effective May 12, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 10060, effective June 29, 1995; emergency amendment at 19 Ill. Reg. 10752, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13009, effective September 5, 1995; amended at 19 Ill. Reg. 16630, effective November 28, 1995; amended at 20 Ill. Reg. 872, effective December 29, 1995; amended at 20 Ill. Reg. 7912, effective May 31, 1996; emergency amendment at 20 Ill. Reg. 9281, effective July 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 12510, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 21 Ill. Reg. 607, effective January 2, 1997; amended at 21 Ill. Reg. 8386, effective June 23, 1997; emergency amendment at 21 Ill. Reg. 9552, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9822, effective July 2, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 10147, effective August 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13349, effective September 23, 1997; emergency amendment at 21 Ill. Reg. 13675, effective September 27, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 16161, effective November 26, 1997; amended at 22 Ill. Reg. 1408, effective December 29, 1997; amended at 22 Ill. Reg. 3083, effective January 26, 1998; amended at 22 Ill. Reg. 11514, effective June 22, 1998; emergency amendment at 22 Ill. Reg. 13070, effective July 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 15027, effective August 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16273, effective August 28, 1998; amended at 22 Ill. Reg. 21490, effective November 25, 1998; amended at 23 Ill. Reg. 5784, effective April 30, 1999; amended at 23 Ill. Reg. 7115, effective June 1, 1999; amended at 23 Ill. Reg. 7908, effective June 30, 1999; emergency amendment at 23 Ill. Reg. 8213, effective July 1, 1999, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 12772, effective October 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13621, effective November 1, 1999; amended at 24 Ill. Reg. 2400, effective February 1, 2000; amended at 24 Ill. Reg. 3845, effective February 25, 2000; emergency amendment at 24 Ill. Reg. 10386, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 11846, effective August 1, 2000; amended at 24 Ill. Reg. 16067, effective October 16, 2000; amended at 24 Ill. Reg. 17146, effective November 1, 2000; amended at 24 Ill. Reg. 18293, effective December 1, 2000; amended at 25 Ill. Reg. 5359, effective April 1, 2001; emergency amendment at 25 Ill. Reg. 5432, effective April 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 6959, effective June 1, 2001; emergency amendment at 25 Ill. Reg. 9974, effective July 23, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 10513, effective August 2, 2001; emergency amendment at 25 Ill. Reg. 12870, effective October 1, 2001, for a maximum of 150 days; emergency expired February 27, 2002; amended at 25 Ill. Reg. 16087, effective December 1, 2001; emergency amendment at 26 Ill. Reg. 536, effective December 31, 2001, for a maximum of 150 days; emergency amendment at

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26 Ill. Reg. 680, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 4825, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 4953, effective March 18, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 7786, effective July 1, 2002; emergency amendment at 26 Ill. Reg. 7340, effective April 30, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 8395, effective May 28, 2002; emergency amendment at 26 Ill. Reg. 11040, effective July 1, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16612, effective October 22, 2002; amended at 26 Ill. Reg. 12322, effective July 26, 2002; amended at 26 Ill. Reg. 13661, effective September 3, 2002; amended at 26 Ill. Reg. 14808, effective September 26, 2002; emergency amendment at 26 Ill. Reg. 14887, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 17775, effective November 27, 2002; emergency amendment at 27 Ill. Reg. 580, effective January 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 866, effective January 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 4386, effective February 24, 2003; emergency amendment at 27 Ill. Reg. 8320, effective April 28, 2003, for a maximum of 150 days; emergency amendment repealed at 27 Ill. Reg. 12121, effective July 10, 2003; amended at 27 Ill. Reg. 9178, effective May 28, 2003; emergency amendment at 27 Ill. Reg. 11041, effective July 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16185, effective October 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16268, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18843, effective November 26, 2003; emergency amendment at 28 Ill. Reg. 1418, effective January 8, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 1766, effective January 10, 2004, for a maximum of 150 days; emergency expired June 7, 2004; amended at 28 Ill. Reg. 2770, effective February 1, 2004; emergency amendment at 28 Ill. Reg. 5902, effective April 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7101, effective May 3, 2004; amended at 28 Ill. Reg. 8072, effective June 1, 2004; emergency amendment at 28 Ill. Reg. 8167, effective June 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 9661, effective July 1, 2004; emergency amendment at 28 Ill. Reg. 10157, effective July 1, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 12036, effective August 3, 2004, for a maximum of 150 days; emergency expired December 30, 2004; emergency amendment at 28 Ill. Reg. 12227, effective August 6, 2004, for a maximum of 150 days; emergency expired January 2, 2005; amended at 28 Ill. Reg. 14557, effective October 27, 2004; amended at 28 Ill. Reg. 15536, effective November 24, 2004; amended at 29 Ill. Reg. 861, effective January 1, 2005; emergency amendment at 29 Ill. Reg. 2026, effective January 21, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 5514, effective April 1, 2005; emergency amendment at 29 Ill. Reg. 5756, effective April 8, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 29 Ill. Reg. 11622, effective July 5, 2005, for the remainder of the 150 days; amended at 29 Ill. Reg. 8363, effective June 1, 2005; emergency amendment at 29 Ill. Reg. 10275, effective July 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 12568, effective August 1, 2005, for a maximum of 150

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days; emergency amendment at 29 Ill. Reg. 15629, effective October 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 19973, effective November 23, 2005; amended at 30 Ill. Reg. 383, effective December 28, 2005; emergency amendment at 30 Ill. Reg. 596, effective January 1, 2006, for a maximum of 150 days; emergency amendment at 30 Ill. Reg. 955, effective January 9, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 2827, effective February 24, 2006; emergency amendment at 30 Ill. Reg. 7786, effective April 10, 2006, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 30 Ill. Reg. 12400, effective July 1, 2006, for the remainder of the 150 days; emergency expired September 6, 2006; amended at 30 Ill. Reg. 8877, effective May 1, 2006; amended at 30 Ill. Reg. 10393, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 11815, effective July 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18672, effective November 27, 2006; emergency amendment at 31 Ill. Reg. 1602, effective January 1, 2007, for a maximum of 150 days; emergency amendment at 31 Ill. Reg. 1997, effective January 15, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 5596, effective April 1, 2007; amended at 31 Ill. Reg. 8123, effective May 30, 2007; amended at 31 Ill. Reg. 8508, effective June 1, 2007; emergency amendment at 31 Ill. Reg. 10137, effective July 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11688, effective August 1, 2007; amended at 31 Ill. Reg. 14792, effective October 22, 2007; amended at 32 Ill. Reg. 312, effective January 1, 2008; emergency amendment at 32 Ill. Reg. 518, effective January 1, 2008, for a maximum of 150 days; emergency amendment at 32 Ill. Reg. 2993, effective February 16, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 8718, effective May 29, 2008; amended at 32 Ill. Reg. 9945, effective June 26, 2008; emergency amendment at 32 Ill. Reg. 10517, effective July 1, 2008, for a maximum of 150 days; emergency expired November 27, 2008; amended at 33 Ill. Reg. 501, effective December 30, 2008; peremptory amendment at 33 Ill. Reg. 1538, effective December 30, 2008; emergency amendment at 33 Ill. Reg. 5821, effective April 1, 2009, for a maximum of 150 days; emergency expired August 28, 2009; amended at 33 Ill. Reg. 13246, effective September 8, 2009; emergency amendment at 34 Ill. Reg. 15856, effective October 1, 2010, for a maximum of 150 days; amended at 34 Ill. Reg. 17737, effective November 8, 2010.

## SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

**Section 148.117 Outpatient Assistance Adjustment Payments**

- a) Qualifying Criteria. Outpatient Assistance Adjustment Payments, as described in subsection (b) of this Section, shall be made to Illinois hospitals meeting one of the criteria identified in this subsection (a):
  - 1) A hospital that qualifies for Disproportionate Share Adjustment Payments for rate year 2007, as defined in Section 148.120, has an emergency care

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percentage greater than 70% and has provided greater than 10,500 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

- 2) A general acute care hospital that qualifies for Disproportionate Share Adjustment Payments for rate year 2007, as defined in Section 148.120, has an emergency care percentage greater than 85%.
- 3) A general acute care hospital that does not qualify for Medicaid Percentage Adjustment Payments for rate year 2007, as defined in Section 148.122, located in Cook County, outside the City of Chicago, has an emergency care percentage greater than 63%, has provided more than 10,750 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year and has provided more than 325 Medicaid surgical group outpatient ambulatory procedure listing services in the outpatient assistance base year.
- 4) A general acute care hospital located outside of Cook County that qualifies for Medicaid Percentage Adjustment Payments for rate year 2007 as defined in Section 148.122, is a trauma center recognized by the Illinois Department of Public Health (IDPH) as of July 1, 2006, has an emergency care percentage greater than 58%, and has provided more than 1,000 Medicaid Non-emergency/Screening outpatient ambulatory procedure listing services in the outpatient assistance base year.
- 5) A hospital that has an MIUR of greater than 50% and an emergency care percentage greater than 80%, and that provided more than 6,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.
- 6) A hospital that has an MIUR of greater than 70% and an emergency care percentage greater than 90%.
- 7) A general acute care hospital, not located in Cook County, that is not a trauma center recognized by IDPH as of July 1, 2006 and did not qualify for Medicaid Percentage Adjustment payments for rate year 2007, as defined in Section 148.122, has an MIUR of greater than 25% and an emergency care percentage greater than 50%, and that provided more than

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8,500 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

- 8) A general acute care hospital, not located in Cook County, that is a Level I trauma center recognized by IDPH as of July 1, 2006, has an emergency care percentage greater than 50%, and provided more than 16,000 Medicaid outpatient ambulatory procedure listing services, including more than 1,000 non-emergency screening outpatient ambulatory procedure listing services, in the outpatient assistance base year.
- 9) A general acute care hospital, not located in Cook County, that qualified for Medicaid Percentage Adjustment payments for rate year 2007, as defined in Section 148.122, has an emergency care percentage greater than 55%, and provided more than 12,000 Medicaid outpatient ambulatory procedure listing services, including more than 600 surgical group outpatient ambulatory procedure listing services and 7,000 emergency services in the outpatient assistance base year.
- 10) A general acute care hospital that has an emergency care percentage greater than 75% and provided more than 15,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.
- 11) A rural hospital that has an MIUR of greater than 40% and provided more than 16,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.
- 12) A general acute care hospital, not located in Cook County, that is a trauma center recognized by IDPH as of July 1, 2006, had more than 500 licensed beds in calendar year 2005, and provided more than 11,000 Medicaid outpatient ambulatory procedure listing services, including more than 950 surgical group outpatient ambulatory procedure listing services, in the outpatient assistance base year.
- 13) A general acute care hospital located outside of Illinois that provided more than 300 high tech diagnostic Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

- b) Outpatient Assistance Adjustment Payments

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- 1) For hospitals qualifying under subsection (a)(1), the rate is \$139.00.
  - 2) For hospitals qualifying under subsection (a)(2), the rate is \$850.00.
  - 3) For hospitals qualifying under subsection (a)(3), the rate is \$425.00.
  - 4) For hospitals qualifying under subsection (a)(4), the rate is \$665.00 through June 30, 2012~~\$375.00~~. For dates of service on or after July 1, 2012, the rate is \$375.00.
  - 5) For hospitals qualifying under subsection (a)(5), the rate is \$250.00.
  - 6) For hospitals qualifying under subsection (a)(6), the rate is \$336.25.
  - 7) For hospitals qualifying under subsection (a)(7), the rate is \$110.00
  - 8) For hospitals qualifying under subsection (a)(8), the rate is \$200.00.
  - 9) For hospitals qualifying under subsection (a)(9), the rate is \$128.50 through June 30, 2012~~\$48.50~~. For dates of service on or after July 1, 2012, the rate is \$48.50.
  - 10) For hospitals qualifying under subsection (a)(10), the rate is \$135.00.
  - 11) For hospitals qualifying under subsection (a)(11), the rate is \$65.00.
  - 12) For hospitals qualifying under subsection (a)(12), the rate is \$90.00.
  - 13) For hospitals qualifying under subsection (a)(13) that have an emergency care percentage greater than 19% but less than 25%, the rate is \$141.00. For hospitals qualifying under subsection (a)(13) that have an emergency care percentage greater than 25%, the rate is \$494.00.
- c) Payment to a Qualifying Hospital
- 1) The total annual payments to a qualifying hospital shall be the product of the hospital's rate multiplied by the Medicaid outpatient ambulatory

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procedure listing services in the outpatient assistance adjustment base year.

- 2) For the outpatient assistance adjustment period for fiscal year ~~2010~~<sup>2009</sup> and after, total payments will equal the amount determined using the methodologies described in subsection (c)(1) of this Section and shall be paid to the hospital, at least, on a quarterly basis.
  - 3) Payments described in subsections (b)(5) through (b)(12) of this Section are contingent upon approval of federal funding for such payments.
- d) Definitions
- 1) "Emergency care percentage" means a fraction, the numerator of which is the total Group 3 ambulatory procedure listing services as described in Section 148.140(b)(1)(C), excluding services for individuals eligible for Medicare, provided by the hospital in State fiscal year 2005 contained in the Department's data base adjudicated through June 30, 2006, and the denominator of which is the total ambulatory procedure listing services as described in Section 148.140(b)(1), excluding services for individuals eligible for Medicare, provided by the hospital in State fiscal year 2005 contained in the Department's data base adjudicated through June 30, 2006.
  - 2) "General acute care hospital" is a hospital that does not meet the definition of a hospital contained in 89 Ill. Adm. Code 149.50(c).
  - 3) "Outpatient Ambulatory Procedure Listing Payments" means, for a given hospital, the sum of payments for ambulatory procedure listing services as described in Section 148.140(b)(1), excluding payments for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.
  - 4) "Outpatient assistance year" means, beginning January 1, 2007, the 6-month period beginning on January 1, 2007 and ending June 30, 2007, and beginning July 1, 2007, the 12-month period beginning July 1 of the year and ending June 30 of the following year.

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- 5) "Outpatient assistance base period" means the 12-month period beginning on July 1, 2004 and ending June 30, 2005.
- 6) "Surgical group outpatient ambulatory procedure listing services" means, for a given hospital, the sum of ambulatory procedure listing services as described in Section 148.140(b)(1)(A), excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.
- 7) "Non-emergency/screening outpatient ambulatory procedure listing services" means, for a given hospital, the sum of ambulatory procedure listing services as described in Section 148.140(b)(1)(C)(iii), excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.
- 8) "High tech diagnostic Medicaid outpatient ambulatory procedure listing services" means, for a given hospital, the sum of ambulatory procedure listing services described in Section 148.140(b)(1)(B)(ii), excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.

(Source: Amended at 34 Ill. Reg. 17737, effective November 8, 2010)

**Section 148.126 Safety Net Adjustment Payments**

- a) Qualifying criteria: Safety net adjustment payments shall be made to a qualifying hospital, as defined in this subsection (a), unless the hospital does not provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on or after July 1, 2006, but did provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on January 1, 2006. A hospital not otherwise excluded under subsection (b) of this Section shall qualify for payment if it meets one of the following criteria:

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- 1) The hospital has, as provided in subsection (e)(6) of this Section, an MIUR equal to or greater than 40 percent.
- 2) The hospital has the highest number of obstetrical care days in the safety net hospital base year.
- 3) The hospital is, as of October 1, 2001, a sole community hospital, as defined by the United States Department of Health and Human Services (42 CFR 412.92).
- 4) The hospital is, as of October 1, 2001, a rural hospital, as described in Section 148.25(g)(3), that meets all of the following criteria:
  - A) Has an MIUR greater than 33 percent.
  - B) Is designated a perinatal level two center by the Illinois Department of Public Health.
  - C) Has fewer than 125 licensed beds.
- 5) The hospital is a rural hospital, as described in Section 148.25(g)(3).
- 6) The hospital meets all of the following criteria:
  - A) Has an MIUR greater than 30 percent.
  - B) Had an occupancy rate greater than 80 percent in the safety net hospital base year.
  - C) Provided greater than 15,000 total days in the safety net hospital base year.
- 7) The hospital meets all of the following criteria:
  - A) Does not already qualify under subsections (a)(1) through (a)(6) of this Section.
  - B) Has an MIUR greater than 25 percent.

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- C) Had an occupancy rate greater than 68 percent in the safety net hospital base year.
  - D) Provided greater than 12,000 total days in the safety net hospital base year.
- 8) The hospital meets all of the following criteria in the safety net base year:
- A) Is a rural hospital, as described in Section 148.25(g)(3).
  - B) Has an MIUR greater than 18 percent.
  - C) Has a combined MIUR greater than 45 percent.
  - D) Has licensed beds less than or equal to 60.
  - E) Provided greater than 400 total days.
  - F) Provided fewer than 125 obstetrical care days.
- 9) The hospital meets all of the following criteria in the safety net base year:
- A) Is a psychiatric hospital, as described in 89 Ill. Adm. Code 149.50(c)(1).
  - B) Has licensed beds greater than 120.
  - C) Has an average length of stay less than ten days.
- 10) The hospital meets all of the following criteria in the safety net base year:
- A) Does not already qualify under subsections (a)(1) through (a)(9) of this Section.
  - B) Has an MIUR greater than 17 percent.
  - C) Has licensed beds greater than 450.

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- D) Has an average length of stay less than four days.
- 11) The hospital meets all of the following criteria in the safety net base year:
- A) Does not already qualify under subsections (a)(1) through (a)(10) of this Section.
  - B) Has an MIUR greater than 21 percent.
  - C) Has licensed beds greater than 350.
  - D) Has an average length of stay less than 3.15 days.
- 12) The hospital meets all of the following criteria in the safety net base year:
- A) Does not already qualify under subsections (a)(1) through (a)(11) of this Section.
  - B) Has an MIUR greater than 34 percent.
  - C) Has licensed beds greater than 350.
  - D) Is designated a perinatal Level II center by the Illinois Department of Public Health.
- 13) The hospital meets all of the following criteria in the safety net base year:
- A) Does not already qualify under subsections (a)(1) through (a)(12) of this Section.
  - B) Has an MIUR greater than 35 percent.
  - C) Has an average length of stay less than four days.
- 14) The hospital meets all of the following criteria in the safety net base year:
- A) Does not already qualify under subsections (a)(1) through (a)(13) of this Section.

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- B) Has a Combined MIUR greater than 25 percent.
  - C) Has an MIUR greater than 12 percent.
  - D) Is designated a perinatal Level II center by the Illinois Department of Public Health.
  - E) Has licensed beds greater than 400.
  - F) Has an average length of stay less than 3.5 days.
- 15) A hospital provider that would otherwise be excluded from payment by subsection (a) because it does not operate a comprehensive emergency room, if the hospital provider operates within 1 mile of an affiliate hospital provider that is owned and controlled by the same governing body that operates a comprehensive emergency room, as defined in 77 Ill. Adm. Code 250.710(a), and the provider operates a standby emergency room, as defined in 77 Ill. Adm. Code 250.710(c), and functions as an overflow emergency room for its affiliate hospital provider.
- 16) The hospital has an MIUR greater than 90% in the safety net hospital base year.
- 17) The hospital meets all of the following criteria in the safety net base year:
- A) Does not already qualify under subsections (a)(1) through (a)(16) of this Section.
  - B) Is located outside HSA 6.
  - C) Has an MIUR greater than 16%.
  - D) Has licensed beds greater than 475.
  - E) Has an average length of stay less than five days.
- 18) The hospital meets all of the following criteria in the safety net base year:
- A) Provided greater than 5,000 obstetrical care days.

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- B) Has a combined MIUR greater than 80%.
- 19) The hospital meets all of the following criteria in the safety net base year:
- A) Does not already qualify under subsections (a)(1) through (a)(18) of this Section.
  - B) Has a CMIUR greater than 28 percent.
  - C) Is designated a perinatal Level II center by the Illinois Department of Public Health.
  - D) Has licensed beds greater than 320.
  - E) Had an occupancy rate greater than 37 percent in the safety net hospital base year.
  - F) Has an average length of stay less than 3.1 days.
- b) The following five classes of hospitals are ineligible for safety net adjustment payments associated with the qualifying criteria listed in subsections (a)(1) through (a)(4), subsections (a)(6) through (a)(8), subsections (a)(10) through (a)(15) and subsections (a)(17) through (a)(19) of this Section:
- 1) Hospitals located outside of Illinois.
  - 2) County-owned hospitals, as described in Section 148.25(b)(1)(A).
  - 3) Hospitals organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B).
  - 4) Psychiatric hospitals, as described in 89 Ill. Adm. Code 149.50(c)(1).
  - 5) Long term stay hospitals, as described in 89 Ill. Adm. Code 149.50(c)(4).
- c) Safety Net Adjustment Rates
- 1) For a hospital qualifying under subsection (a)(1) of this Section, the rate is

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the sum of the amounts for each of the following criteria for which it qualifies:

- A) A qualifying hospital – \$15.00.
- B) A rehabilitation hospital, as described in 89 Ill. Adm. Code 149.50(c)(2) – \$20.00.
- C) A children's hospital, as described in 89 Ill. Adm. Code 149.50(c)(3) – \$20.00.
- D) A children's hospital that has an MIUR greater than or equal to 80 per centum that is:
  - i) Located within HSA 6 or HSA 7 – \$296.00.
  - ii) Located outside HSA 6 or HSA 7 – \$35.00.
- E) A children's hospital that has an MIUR less than 80 per centum, but greater than or equal to 60 per centum, that is:
  - i) Located within HSA 6 or HSA 7 – \$35.00.
  - ii) Located outside HSA 6 or HSA 7 – \$15.00.
- F) A children's hospital that has an MIUR less than 60 per centum, but greater than or equal to 45 per centum, that is:
  - i) Located within HSA 6 or HSA 7 – \$12.00.
  - ii) Located outside HSA 6 or HSA 7 – \$5.00.
- G) A children's hospital with more than 25 graduate medical education programs, as listed in the "2000-2001 Graduate Medical Education Directory" – \$160.25.
- H) A children's hospital that is a rural hospital – \$145.00.
- I) A qualifying hospital that is neither a rehabilitation hospital nor a

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children's hospital that is located in HSA 6 and that:

- i) Provides obstetrical care – \$10.00.
  - ii) Has at least one graduate medical education program, as listed in the "2000-2001 Graduate Medical Education Directory" – \$5.00.
  - iii) Has at least one obstetrical graduate medical education program, as listed in the "2000-2001 Graduate Medical Education Directory" – \$5.00.
  - iv) Provided more than 5,000 obstetrical days during the safety net hospital base year – \$35.00.
  - v) Provided fewer than 4,000 obstetrical days during the safety net hospital base year and its average length of stay is: less than or equal to 4.50 days – \$5.00; less than 4.00 days – \$5.00; less than 3.75 days – \$5.00.
  - vi) Provides obstetrical care and has an MIUR greater than 65 percent – \$11.00.
  - vii) Has greater than 700 licensed beds – \$37.75.
- J) A qualifying hospital that is neither a rehabilitation hospital nor a children's hospital, that is located outside HSA 6, that has an MIUR greater than 50 per centum, and that:
- i) Provides obstetrical care – \$280.00 if federal approval is received by the Department for such a rate; otherwise, the rate shall be \$70.00.
  - ii) Does not provide obstetrical care – \$120.00 if federal approval is received by the Department for such a rate; otherwise, the rate shall be \$30.00.
  - iii) Is a trauma center, recognized by the Illinois Department of Public Health (IDPH), as of July 1, 2005 – \$173.50.

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- K) A qualifying hospital that provided greater than 35,000 total days in the safety net hospital base year – \$43.25.
  - L) A qualifying hospital with two or more graduate medical education programs, as listed in the "2000-2001 Graduate Medical Education Directory", with an average length of stay fewer than 4.00 days – \$48.00.
- 2) For a hospital qualifying under subsection (a)(2) of this Section, the rate shall be \$123.00.
  - 3) For a hospital qualifying under subsection (a)(3) of this Section, the rate is the sum of the amounts for each of the following criteria for which it qualifies:
    - A) A qualifying hospital – \$40.00.
    - B) A hospital that has an average length of stay of fewer than 4.00 days, and:
      - i) More than 150 licensed beds – \$20.00.
      - ii) Fewer than 150 licensed beds – \$40.00.
    - C) A qualifying hospital with the lowest average length of stay – \$15.00.
    - D) A hospital that has a CMIUR greater than 65 per centum – \$35.00.
    - E) A hospital that has fewer than 25 total admissions in the safety net hospital base year – \$160.00.
  - 4) For a hospital qualifying under subsection (a)(4) of this Section, the rate shall be \$110.00 if federal approval is received by the Department for such a rate; otherwise, the rate shall be \$55.00.
  - 5) For a hospital qualifying under subsection (a)(5) of this Section, the rate is the sum of the amounts for each of the following for which it qualifies,

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divided by the hospital's total days:

- A) The hospital that has the highest number of obstetrical care admissions – \$30,840.00.
  - B) The greater of:
    - i) The product of \$115.00 multiplied by the number of obstetrical care admissions.
    - ii) The product of \$11.50 multiplied by the number of general care admissions.
- 6) For a hospital qualifying under subsection (a)(6) of this Section, the rate is \$56.00 if federal approval is received by the Department for such a rate; otherwise, the rate shall be \$53.00.
  - 7) For a hospital qualifying under subsection (a)(7) of this Section, the rate is ~~\$315.50 through June 30, 2012~~\$210.50 if federal approval is received by the Department for ~~that such a~~ rate; otherwise, the rate shall be ~~\$210.50~~\$175.50. For dates of service on or after July 1, 2012, the rate is \$210.50.
  - 8) For a hospital qualifying under subsection (a)(8) of this Section, the rate is \$124.50.
  - 9) For a hospital qualifying under subsection (a)(9) of this Section, the rate is ~~\$133.00 through June 30, 2012~~. For dates of service on or after July 1, 2012, the rate is \$85.50.
  - 10) For a hospital qualifying under subsection (a)(10) of this Section, the rate is \$13.75.
  - 11) For a hospital qualifying under subsection (a)(11) of this Section, the rate is ~~\$421.00~~\$200.00 ~~for dates of service on or after April 1, 2009~~ through June 30, ~~2012~~2010. For dates of service on or after July 1, ~~2012~~2010, the rate is \$39.50.

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- 12) For a hospital qualifying under subsection (a)(12) of this Section, the rate is \$240.50 if federal approval is received by the Department for such a rate; otherwise, the rate shall be \$120.25.
  - 13) For a hospital qualifying under subsection (a)(13) of this Section, for dates of service on or after April 1, 2009, the rate is \$815.00.
  - 14) For a hospital qualifying under subsection (a)(14) of this Section, the rate is \$443.75 if federal approval is received by the Department for such a rate; otherwise, the rate shall be \$343.75.
  - 15) For a hospital qualifying under subsection (a)(16) of this Section, the rate is \$39.50.
  - 16) For a hospital qualifying under subsection (a)(17) of this Section, the rate is \$69.00. This reimbursement rate is contingent on federal approval.
  - 17) For a hospital qualifying under subsection (a)(18) of this Section, the rate is ~~\$56.00 through June 30, 2012~~\$16.00. For dates of service on or after July 1, 2012, the rate is \$16.00. This reimbursement rate is contingent on federal approval.
  - 18) For a hospital qualifying under subsection (a)(19) of this Section, ~~for dates of service on or after April 1, 2009,~~ the rate is ~~\$229.00 through June 30, 2012.~~ For dates of service on or after July 1, 2012, the rate is \$145.00.
- d) Payment to a Qualifying Hospital
- 1) The total annual payments to a qualifying hospital shall be the product of the hospital's rate multiplied by two multiplied by total days.
  - 2) For the safety net adjustment period occurring in State fiscal year ~~2010~~2008, total payments will be determined through application of the methodologies described in subsection (c) of this Section.
  - 3) For safety net adjustment periods occurring after State fiscal year ~~2010~~2008, total payments made under this Section shall be paid in installments on, at least, a quarterly basis.

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## e) Definitions

- 1) "Average length of stay" means, for a given hospital, a fraction in which the numerator is the number of total days and the denominator is the number of total admissions.
- 2) "CMIUR" means, for a given hospital, the sum of the MIUR plus the Medicaid obstetrical inpatient utilization rate, determined as of October 1, 2001, as defined in Section 148.120(i)(6).
- 3) "General care admissions" means, for a given hospital, the number of hospital inpatient admissions for recipients of medical assistance under Title XIX of the Social Security Act, as tabulated from the Department's claims data for admissions occurring in the safety net hospital base year that were adjudicated by the Department by June 30, 2001, excluding admissions for: obstetrical care, as defined in subsection (e)(7) of this Section; normal newborns; psychiatric care; physical rehabilitation; and those covered in whole or in part by Medicare (Medicaid/Medicare crossover admissions).
- 4) "HSA" means Health Service Area, as defined by the Illinois Department of Public Health.
- 5) "Licensed beds" means, for a given hospital, the number of licensed beds, excluding long term care and substance abuse beds, as listed in the July 25, 2001, Illinois Department of Public Health report entitled "Percent Occupancy by Service in Year 2000 for Short Stay, Non-Federal Hospitals in Illinois."
- 6) "MIUR", for a given hospital, has the meaning as defined in Section 148.120(i)(5) and shall be determined in accordance with Section 148.120(c) and (f). For purposes of this Section, the MIUR determination that was used to determine a hospital's eligibility for Disproportionate Share Hospital Adjustment payments in rate year 2002 shall be the same determination used to determine a hospital's eligibility for safety net adjustment payments in the Safety Net Adjustment Period.
- 7) "Obstetrical care admissions" means, for a given hospital, the number of hospital inpatient admissions for recipients of medical assistance under

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Title XIX of the Social Security Act, as tabulated from the Department's claims data, for admissions occurring in the safety net hospital base year that were adjudicated by the Department through June 30, 2001, and were assigned by the Department a diagnosis related grouping (DRG) code of 370 through 375.

- 8) "Obstetrical care days" means, for a given hospital, days of hospital inpatient service associated with the obstetrical care admissions described in subsection (e)(7) of this Section.
- 9) "Occupancy rate" means, for a given hospital, a fraction, the numerator of which is the hospital's total days, excluding long term care and substance abuse days, and the denominator of which is the hospital's total beds, excluding long term care and substance abuse beds, multiplied by 365 days. The data used for calculation of the hospital occupancy rate is as listed in the July 25, 2001, Illinois Department of Public Health report entitled "Percent Occupancy by Service in Year 2000 for Short Stay, Non-Federal Hospitals in Illinois".
- 10) "Safety net hospital base year" means the 12-month period beginning on July 1, 1999, and ending on June 30, 2000.
- 11) "Safety net adjustment period" means, beginning July 1, 2002, the 12 month period beginning on July 1 of a year and ending on June 30 of the following year.
- 12) "Total admissions" means, for a given hospital, the number of hospital inpatient admissions for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover admissions), as tabulated from the Department's claims data for admissions occurring in the safety net hospital base year that were adjudicated by the Department through June 30, 2001.
- 13) "Total days" means, for a given hospital, the sum of days of inpatient hospital service provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding days for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover days), as tabulated from the Department's claims data for

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admissions occurring in the safety net hospital base year that were adjudicated by the Department through June 30, 2001.

(Source: Amended at 34 Ill. Reg. 17737, effective November 8, 2010)

**Section 148.295 Critical Hospital Adjustment Payments (CHAP)**

Critical Hospital Adjustment Payments (CHAP) shall be made to all eligible hospitals excluding county-owned hospitals, as described in Section 148.25(b)(1)(A), unless otherwise noted in this Section, and hospitals organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B), for inpatient admissions occurring on or after July 1, 1998, in accordance with this Section.

- a) Trauma Center Adjustments (TCA)

The Department shall make a TCA to hospitals recognized, as of the first day of July in the CHAP rate period, as a Level I or Level II trauma center by the Illinois Department of Public Health (IDPH) in accordance with the provisions of subsections (a)(1) through (a)(4) of this Section. For the purpose of a TCA, a children's hospital, as defined under 89 Ill. Adm. Code 149.50(c)(3), operating under the same license as a hospital designated as a trauma center, shall be deemed to be a trauma center.
- 1) Level I Trauma Center Adjustment.
  - A) Criteria. Hospitals that, on the first day of July in the CHAP rate period, are recognized as a Level I trauma center by IDPH shall receive the Level I trauma center adjustment. Hospitals qualifying under subsection (a)(2) are not eligible for payment under this subsection.
  - B) Adjustment. Hospitals meeting the criteria specified in subsection (a)(1)(A) of this Section shall receive an adjustment as follows:
    - i) Hospitals with Medicaid trauma admissions equal to or greater than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) of this Section, shall receive an adjustment of \$21,365.00 per Medicaid trauma admission in the CHAP base period.

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- ii) Hospitals with Medicaid trauma admissions less than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) of this Section, shall receive an adjustment of \$14,165.00 per Medicaid trauma admission in the CHAP base period.
- 2) Level I Trauma Center Adjustment for hospitals located in the same city, that alternate their Level I trauma center designation.
- A) Criteria. Hospitals that are located in the same city and participate in an agreement in effect as of July 1, 2007, whereby their designation as a Level I trauma center by the Illinois Department of Public Health is rotated among qualifying hospitals from year to year or during a year, that are in the following classes:
    - i) A children's hospital – All children's hospitals as defined in 89 Ill. Adm. Code 149.50(c)(3), in a given city, qualifying under subsection (a)(2)(A) shall be considered one entity for the purpose of calculating the adjustment in subsection (a)(2)(B).
    - ii) A general acute care hospital – All general acute care adult hospitals, in a given city, affiliated with a children's hospital, as defined in subsection (a)(2)(A)(i), qualifying under subsection (a)(2)(A) shall be considered one entity for the purposes of calculating the adjustment in subsection (a)(2)(B).
  - B) Adjustment. Hospitals meeting the criteria specified in subsection (a)(2)(A) shall receive an adjustment as follows:
    - i) If the sum of Medicaid trauma center admissions within either class, as described in subsection (a)(2)(A), is equal to or greater than the mean Medicaid trauma admissions for the 2 classes under subsection (a)(2)(A) of this Section, then each member of that class shall receive an adjustment of \$5,250.00 per Medicaid trauma admission for that class, in the CHAP base period.

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- ii) If the sum of Medicaid trauma center admissions within either class, as described in subsection (a)(2)(A), is less than the mean Medicaid trauma admissions of the 2 classes under subsection (a)(2)(A) of this Section, then each member of that class shall receive an adjustment of \$3,625.00 per Medicaid trauma admission for that class in the CHAP base period.
- 3) Level II Rural Trauma Center Adjustment. Rural hospitals, as defined in Section 148.25(g)(3), that, on the first day of July in the CHAP rate period, are recognized as a Level II trauma center by the Illinois Department of Public Health shall receive an adjustment of \$11,565.00 per Medicaid trauma admission in the CHAP base period.
- 4) Level II Urban Trauma Center Adjustment. Urban hospitals, as described in Section 148.25(g)(4), that, on the first day of July in the CHAP rate period, are recognized as Level II trauma centers by the Illinois Department of Public Health shall receive an adjustment of \$11,565.00 per Medicaid trauma admission in the CHAP base period, provided that such hospital meets the criteria described below:
  - A) The hospital is located in a county with no Level I trauma center; and
  - B) The hospital is located in a Health Professional Shortage Area (HPSA) (42 CFR 5), as of the first day of July in the CHAP rate period, and has a Medicaid trauma admission percentage at or above the mean of the individual facility values determined in subsection (a)(4) of this Section; or the hospital is not located in an HPSA and has a Medicaid trauma admission percentage that is at least the mean plus one standard deviation of the individual facility values determined in subsection (a)(4) of this Section; and
  - C) The hospital does not qualify under subsection (a)(2).
- 5) In determining annual payments that are pursuant to the Trauma Center Adjustments as described in this Section, for the CHAP rate period occurring in State fiscal year 2009, total payments will equal the methodologies described in this Section. For the period December 1, 2008

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to June 30, 2009, payment will equal the State fiscal year 2009 amount less the amount the hospital received for the period July 1, 2008 to November 30, 2008.

- b) **Rehabilitation Hospital Adjustment (RHA)**  
Illinois hospitals that, on the first day of July in the CHAP rate period, qualify as rehabilitation hospitals, as defined in 89 Ill. Adm. Code 149.50(c)(2), and that are accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), shall receive a rehabilitation hospital adjustment in the CHAP rate period that consists of the following three components:
- 1) **Treatment Component.** All hospitals defined in subsection (b) of this Section shall receive \$4,215.00 per Medicaid Level I rehabilitation admission in the CHAP base period.
  - 2) **Facility Component.** All hospitals defined in subsection (b) of this Section shall receive a facility component that shall be based upon the number of Medicaid Level I rehabilitation admissions in the CHAP base period as follows:
    - A) Hospitals with fewer than 60 Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of \$229,360.00 in the CHAP rate period.
    - B) Hospitals with 60 or more Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of \$527,528.00 in the CHAP rate period.
  - 3) **Health Professional Shortage Area Adjustment Component.** Hospitals defined in subsection (b) of this Section that are located in an HPSA on July 1, 1999, shall receive \$276.00 per Medicaid Level I rehabilitation inpatient day in the CHAP base period.
- c) **Direct Hospital Adjustment (DHA) Criteria**
- 1) **Qualifying Criteria**  
Hospitals may qualify for the DHA under this subsection (c) under the following categories unless the hospital does not provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a)

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on or after July 1, 2006, but did provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on January 1, 2006:

- A) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals and long term stay hospitals, all other hospitals located in Health Service Area (HSA) 6 that either:
  - i) were eligible for Direct Hospital Adjustments under the CHAP program as of July 1, 1999 and had a Medicaid inpatient utilization rate (MIUR) equal to or greater than the statewide mean in Illinois on July 1, 1999;
  - ii) were eligible under the Supplemental Critical Hospital Adjustment Payment (SCHAP) program as of July 1, 1999 and had an MIUR equal to or greater than the statewide mean in Illinois on July 1, 1999; or
  - iii) were county owned hospitals as defined in 89 Ill. Adm. Code 148.25(b)(1)(A), and had an MIUR equal to or greater than the statewide mean in Illinois on July 1, 1999.
- B) Illinois hospitals located outside of HSA 6 that had an MIUR greater than 60 percent on July 1, 1999 and an average length of stay less than ten days. The following hospitals are excluded from qualifying under this subsection (c)(1)(B): children's hospitals; psychiatric hospitals; rehabilitation hospitals; and long term stay hospitals.
- C) Children's hospitals, as defined under 89 Ill. Adm. Code 149.50(c)(3), on July 1, 1999.
- D) Illinois teaching hospitals, with more than 40 graduate medical education programs on July 1, 1999, not qualifying in subsection (c)(1)(A), (B), or (C) of this Section.
- E) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals,

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long term stay hospitals and hospitals qualifying in subsection (c)(1)(A), (B), (C) or (D) of this Section, all other hospitals located in Illinois that had an MIUR equal to or greater than the mean plus one-half standard deviation on July 1, 1999 and provided more than 15,000 ~~total~~ days.

- F) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals otherwise qualifying in subsection (c)(1)(A), (B), (C), (D), or (E) of this Section, all other hospitals that had an MIUR greater than 40 percent on July 1, 1999 and provided more than 7,500 ~~total~~ days and provided obstetrical care as of July 1, 2001.
- G) Illinois teaching hospitals with 25 or more graduate medical education programs on July 1, 1999 that are affiliated with a Regional Alzheimer's Disease Assistance Center as designated by the Alzheimer's Disease Assistance Act [410 ILCS 405/4], that had an MIUR less than 25 percent on July 1, 1999 and provided 75 or more Alzheimer days for patients diagnosed as having the disease.
- H) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals otherwise qualifying in subsection (c)(1)(A) through (c)(1)(G) of this Section, all other hospitals that had an MIUR greater than 50 percent on July 1, 1999.
- I) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals otherwise qualifying in subsection (c)(1)(A) through (c)(1)(H) of this Section, all other hospitals that had an MIUR greater than 23 percent on July 1, 1999, had an average length of stay less than four days, provided more than 4,200 ~~total~~ days and provided 100 or more Alzheimer days for patients diagnosed as having the disease.
- J) A hospital that does not qualify under subsection (c)(1) of this Section because it does not operate a comprehensive emergency

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room will qualify if the hospital provider operates a standby emergency room, as defined in 77 Ill. Adm. Code 250.710(c), and functions as an overflow emergency room for its affiliate hospital provider, owned and controlled by the same governing body, that operates a comprehensive emergency room, as defined in 77 Ill. Adm. Code 250.710(a), within one mile of the hospital provider.

- 2) DHA Rates
  - A) For hospitals qualifying under subsection (c)(1)(A) of this Section, the DHA rates are as follows:
    - i) Hospitals that have a Combined MIUR that is equal to or greater than the Statewide mean Combined MIUR, but less than one standard deviation above the Statewide mean Combined MIUR, will receive \$69.00 per day for hospitals that do not provide obstetrical care and \$105.00 per day for hospitals that do provide obstetrical care.
    - ii) Hospitals that have a Combined MIUR that is equal to or greater than one standard deviation above the Statewide mean Combined MIUR, but less than one and one-half standard deviation above the Statewide mean Combined MIUR, will receive \$105.00 per day for hospitals that do not provide obstetrical care and \$142.00 per day for hospitals that do provide obstetrical care.
    - iii) Hospitals that have a Combined MIUR that is equal to or greater than one and one-half standard deviation above the Statewide mean Combined MIUR, but less than two standard deviations above the Statewide mean Combined MIUR, will receive \$124.00 per day for hospitals that do not provide obstetrical care and \$160.00 per day for hospitals that do provide obstetrical care.
    - iv) Hospitals that have a Combined MIUR that is equal to or greater than two standard deviations above the Statewide mean Combined MIUR will receive \$142.00 per day for

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hospitals that do not provide obstetrical care and \$179.00 per day for hospitals that do provide obstetrical care.

- B) Hospitals qualifying under subsection (c)(1)(A) of this Section will also receive the following rates:
- i) County owned hospitals as defined in Section 148.25 with more than 30,000 ~~total~~~~Total~~ days will have their rate increased by \$455.00 per day.
  - ii) Hospitals that are not county owned with more than 30,000 ~~total~~~~Total~~ days will have their rate increased by \$354.00 per day for dates of service on or after April 1, 2009.
  - iii) Hospitals with more than 80,000 ~~total~~~~Total~~ days will have their rate increased by an additional \$423.00 per day.
  - iv) Hospitals with more than 4,500 ~~obstetrical~~~~Obstetrical~~ days will have their rate increased by \$101.00 per day.
  - v) Hospitals with more than 5,500 ~~obstetrical~~~~Obstetrical~~ days will have their rate increased by an additional \$194.00 per day.
  - vi) Hospitals with an MIUR greater than 74 percent will have their rate increased by \$147.00 per day.
  - vii) Hospitals with an average length of stay less than 3.9 days will have their rate increased by ~~\$385.00~~~~\$131.00~~ per day through June 30, 2012~~for dates of service on or after April 1, 2009. For dates of service on or after July 1, 2012, the rate is \$131.00.~~
  - viii) Hospitals with an MIUR greater than the statewide mean plus one standard deviation that are designated a Perinatal Level 2 Center and have one or more obstetrical graduate medical education programs as of July 1, 1999 will have their rate increased by \$360.00 per day for dates of service on or after April 1, 2009.

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- ix) Hospitals receiving payments under subsection (c)(2)(A)(ii) of this Section that have an average length of stay less than four days will have their rate increased by \$650.00 per day for dates of service on or after April 1, 2009.
  - x) Hospitals receiving payments under subsection (c)(2)(A)(ii) of this Section that have an MIUR greater than 60 percent will have their rate increased by \$320.50 per day.
  - xi) Hospitals receiving payments under subsection (c)(2)(A)(iv) of this Section that have an MIUR greater than 70 percent and have more than 20,000 days will have their rate increased by \$185.00 per day for dates of service on or after April 1, 2009.
  - xii) Hospitals with a Combined MIUR greater than 75 percent that have more than 20,000 total days, have an average length of stay less than five days and have at least one graduate medical program will have their rate increased by \$148.00 per day.
- C) Hospitals qualifying under subsection (c)(1)(B) of this Section will receive the following rates:
- i) Qualifying hospitals will receive a rate of \$421.00 per day.
  - ii) Qualifying hospitals with more than 1,500 ~~obstetrical~~ ~~Obstetrical~~ days will have their rate increased by ~~\$824.00~~ ~~\$600~~ per day ~~for dates of service on or after April 1, 2009~~ through June 30, ~~2012~~ ~~2010~~. For dates of service on or after July 1, ~~2012~~ ~~2010~~, the rate is \$369.00.
- D) Hospitals qualifying under subsection (c)(1)(C) of this Section will receive the following rates:
- i) Hospitals will receive a rate of \$28.00 per day.

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- ii) Hospitals located in Illinois and outside of HSA 6 that have an MIUR greater than 60 percent will have their rate increased by \$55.00 per day.
- iii) Hospitals located in Illinois and inside HSA 6 that have an MIUR greater than 80 percent will have their rate increased by \$573.00 per day.
- iv) Hospitals that are not located in Illinois that have an MIUR greater than 45 percent will have their rate increased by:
- ~~For \$32.00 per day for~~ hospitals that have fewer than 4,000 ~~total~~ ~~Total~~ days, \$32.00 per day.
  - For hospitals that have more than 4,000 total days but fewer than 8,000 total days, \$363.00 per day for dates of service through June 30, 2012; for dates of service on or after July 1, 2012, the rate is \$246.00 per day.
  - For hospitals that have more than 8,000 total days, \$295.00 per day for dates of service through June 30, 2012; for dates of service on or after July 1, 2012, the rate is \$178 per day.; or \$246.00 per day for hospitals that have more than 4,000 Total days but fewer than 8,000 Total days; or \$178.00 per day for hospitals that have more than 8,000 Total days.
- v) Hospitals with more than 3,200 ~~total~~ ~~Total~~ admissions will have their rate increased by \$328.00 per day.
- E) Hospitals qualifying under subsection (c)(1)(D) of this Section will receive the following rates:
- i) Hospitals will receive a rate of \$41.00 per day.
- ii) Hospitals with an MIUR between 18 percent and 19.75 percent will have their rate increased by an additional \$14.00 per day.

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- iii) Hospitals with an MIUR equal to or greater than 19.75 percent will have their rate increased by an additional \$191.00 per day for dates of service on or after April 1, 2009.
- iv) Hospitals with a combined MIUR that is equal to or greater than 35 percent will have their rate increased by an additional \$41.00 per day.
- F) Hospitals qualifying under subsection (c)(1)(E) of this Section will receive \$188.00 per day.
- G) Hospitals qualifying under subsection (c)(1)(F) of this Section will receive a rate of \$55.00 per day.
- H) Hospitals that qualify under subsection (c)(1)(G) of this Section will receive the following rates:
  - i) Hospitals with an MIUR greater than 19.75 percent will receive a rate of \$69.00 per day.
  - ii) Hospitals with an MIUR equal to or less than 19.75 percent, will receive a rate of \$11.00 per day.
- I) Hospitals qualifying under subsection (c)(1)(H) of this Section will receive a rate of \$268.00 per day.
- J) Hospitals qualifying under subsection (c)(1)(I) of this Section will receive a rate of \$328.00 per day if federal approval is received by the Department for such a rate; otherwise, the rate shall be \$238.00 per day.
- K) Hospitals that qualify under subsection (c)(1)(A)(iii) of this Section will have their rates multiplied by a factor of two. The payments calculated under this Section to hospitals that qualify under subsection (c)(1)(A)(iii) of this Section may be adjusted by the Department to ensure compliance with aggregate and hospital specific federal payment limitations. A portion of the payments

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calculated under this Section may be classified as disproportionate share adjustments for hospitals qualifying under subsection (c)(1)(A)(iii) of this Section.

## 3) DHA Payments

A) Payments under this subsection (c) will be made at least quarterly, beginning with the quarter ending December 31, 1999.

B) Payment rates will be multiplied by the ~~total~~Total days.

C) For the CHAP rate period occurring in State fiscal year ~~2010~~2008, total payments will equal the methodologies described in subsection (c)(2) of this Section.

## d) Rural Critical Hospital Adjustment Payments (RCHAP)

RCHAP shall be made to rural hospitals, as described in 89 Ill. Adm. Code 140.80(j)(1), for certain inpatient admissions. The hospital qualifying under this subsection that has the highest number of Medicaid obstetrical care admissions during the CHAP base period shall receive \$367,179.00 per year. The Department shall also make an RCHAP to hospitals qualifying under this subsection at a rate that is the greater of:

- 1) the product of \$1,367.00 multiplied by the number of RCHAP Obstetrical Care Admissions in the CHAP base period, or
- 2) the product of \$138.00 multiplied by the number of RCHAP General Care Admissions in the CHAP base period.

## e) Total CHAP Adjustments

Each eligible hospital's critical hospital adjustment payment shall equal the sum of the amounts described in subsections (a), (b), (c) and (d) of this Section. The critical hospital adjustment payments shall be paid at least quarterly.

## f) Critical Hospital Adjustment Limitations

Hospitals that qualify for trauma center adjustments under subsection (a) of this Section shall not be eligible for the total trauma center adjustment if, during the CHAP rate period, the hospital is no longer recognized by the Illinois Department of Public Health as a Level I trauma center as required for the adjustment

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described in subsection (a)(1) of this Section, or a Level II trauma center as required for the adjustment described in subsection (a)(2) or (a)(3) of this Section. In these instances, the adjustments calculated shall be pro-rated, as applicable, based upon the date that such recognition ceased. This limitation does not apply to hospitals qualifying under subsection (a)(2).

## g) Critical Hospital Adjustment Payment Definitions

The definitions of terms used with reference to calculation of the CHAP required by this Section are as follows:

- 1) "Alzheimer days" means total paid days contained in the Department's paid claims database with a ICD-9-CM diagnosis code of 331.0 for dates of service occurring in State fiscal year 2001 and adjudicated through June 30, 2002.
- 2) "CHAP base period" means State Fiscal Year 1994 for CHAP calculated for the July 1, 1995 CHAP rate period; State Fiscal Year 1995 for CHAP calculated for the July 1, 1996 CHAP rate period; etc.
- 3) "CHAP rate period" means, beginning July 1, 1995, the 12 month period beginning on July 1 of the year and ending June 30 of the following year.
- 4) "Combined MIUR" means the sum of Medicaid Inpatient Utilization Rate (MIUR) as of July 1, 1999, and as defined in Section 148.120(k)(5), plus the Medicaid obstetrical inpatient utilization rate, as described in Section 148.120(k)(6), as of July 1, 1999.
- 5) "Medicaid general care admission" means hospital inpatient admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for normal newborns, Medicare/Medicaid crossover admissions, psychiatric and rehabilitation admissions.
- 6) "Medicaid Level I rehabilitation admissions" means those claims billed as Level I admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an ICD-9-

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CM principal diagnosis code of: 054.3, 310.1 through 310.2, 320.1, 336.0 through 336.9, 344.0 through 344.2, 344.8 through 344.9, 348.1, 801.30, 803.10, 803.84, 806.0 through 806.19, 806.20 through 806.24, 806.26, 806.29 through 806.34, 806.36, 806.4 through 806.5, 851.06, 851.80, 853.05, 854.0 through 854.04, 854.06, 854.1 through 854.14, 854.16, 854.19, 905.0, 907.0, 907.2, 952.0 through 952.09, 952.10 through 952.16, 952.2, and V57.0 through V57.89, excluding admissions for normal newborns.

- 7) "Medicaid Level I rehabilitation inpatient day" means the days associated with the claims defined in subsection (g)(5) of this Section.
- 8) "Medicaid obstetrical care admission" means hospital inpatient admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of Social Security Act, with Diagnosis Related Grouping (DRG) of 370 through 375; and specifically excludes Medicare/Medicaid crossover claims.
- 9) "Medicaid trauma admission" means those claims billed as admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an ICD-9-CM principal diagnosis code of: 800.0 through 800.99, 801.0 through 801.99, 802.0 through 802.99, 803.0 through 803.99, 804.0 through 804.99, 805.0 through 805.98, 806.0 through 806.99, 807.0 through 807.69, 808.0 through 808.9, 809.0 through 809.1, 828.0 through 828.1, 839.0 through 839.31, 839.7 through 839.9, 850.0 through 850.9, 851.0 through 851.99, 852.0 through 852.59, 853.0 through 853.19, 854.0 through 854.19, 860.0 through 860.5, 861.0 through 861.32, 862.8, 863.0 through 863.99, 864.0 through 864.19, 865.0 through 865.19, 866.0 through 866.13, 867.0 through 867.9, 868.0 through 868.19, 869.0 through 869.1, 887.0 through 887.7, 896.0 through 896.3, 897.0 through 897.7, 900.0 through 900.9, 902.0 through 904.9, 925 through 925.2, 926.8, 929.0 through 929.99, 958.4, 958.5, 990 through 994.99.
- 10) "Medicaid trauma admission percentage" means a fraction, the numerator of which is the hospital's Medicaid trauma admissions and the

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denominator of which is the total Medicaid trauma admissions in a given 12 month period for all Level II urban trauma centers.

- 11) "RCHAP general care admissions" means Medicaid General Care Admissions, as defined in subsection (g)(4) of this Section, less RCHAP Obstetrical Care Admissions, occurring in the CHAP base period.
- 12) "RCHAP obstetrical care admissions" means Medicaid Obstetrical Care Admissions, as defined in subsection (g)(7) of this Section, with a Diagnosis Related Grouping (DRG) of 370 through 375, occurring in the CHAP base period.
- 13) "Total admissions" means total paid admissions contained in the Department's paid claims database, including obstetrical admissions multiplied by two and excluding Medicare crossover admissions, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.
- 14) "Total days" means total paid days contained in the Department's paid claims database, including obstetrical days multiplied by two and excluding Medicare crossover days, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.
- 15) "Total obstetrical days" means hospital inpatient days for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999, with an ICD-9-CM principal diagnosis code of 640.0 through 648.9 with a 5<sup>th</sup> digit of 1 or 2; 650; 651.0 through 659.9 with a 5<sup>th</sup> digit of 1, 2, 3, or 4; 660.0 through 669.9 with a 5<sup>th</sup> digit of 1, 2, 3, or 4; 670.0 through 676.9 with a 5<sup>th</sup> digit of 1 or 2; V27 through V27.9; V30 through V39.9; or any ICD-9-CM principal diagnosis code that is accompanied with a surgery procedure code between 72 and 75.99; and specifically excludes Medicare/Medicaid crossover claims.

(Source: Amended at 34 Ill. Reg. 17737, effective November 8, 2010)

**Section 148.462 Hospital Medicaid Stimulus Payments**

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One-time payments shall be made to all eligible Illinois hospitals, for inpatient and outpatient Medicaid services occurring on or after December 10, 2009, in accordance with this Section. The total payment shall be the sum of the following payment methodologies:

- a) Rural Emergency Services Stimulus Adjustment (RESA)
  - 1) Qualifying Criteria
    - A) Rural Illinois hospitals, as defined at 89 Ill. Adm. Code 148.25(g)(3), licensed by the Department of Public Health (IDPH) under the Hospital Licensing Act, certified by IDPH to participate in the Illinois Medicaid Program, and enrolled with the Department of Healthcare and Family Services to participate in the Illinois Medicaid Program; and
    - B) Provide services as required under 77 Ill. Adm. Code 250.710 in an emergency room subject to the requirements under either 77 Ill. Adm. Code 250.2440(k) or 77 Ill. Adm. Code 250.2630(k).
  - 2) Payment. Hospitals meeting the qualifying criteria shall receive a supplemental outpatient payment equal to the hospital's outpatient ambulatory procedure listing payments for Group 3 services, as defined in Section 148.140(b)(1)(C), except that a qualifying hospital designated as a critical access hospital by IDPH in accordance with 42 CFR 485, subpart F (2001) as of July 1, 2009 shall have the payment determined under subsection (a)(2)(A) of this Section multiplied by 3.5, rounded to the nearest whole dollar.
- b) Obstetrical Care Severity and Volume Stimulus Adjustment (OCSVSA)
  - 1) Qualifying Criteria

With the exception of a large public hospital, a hospital designated as of July 1, 2009 by IDPH as a Perinatal Level III facility in accordance with 77 Ill. Adm. Code 250.1820(f)(1)(C) and that provided more than 2,000 Medicaid obstetrical days.
  - 2) Payment. Hospitals meeting the qualifying criteria shall receive a supplemental inpatient payment equal to the product of:

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- A) The hospital's Medicaid obstetrical days; and
  - B) \$175.00.
- c) Illinois Trauma Center Stimulus Adjustment (ITCA)
  - 1) Qualifying Criteria

With the exception of a large public hospital, a hospital designated as of July 1, 2009 by IDPH as a Level I Trauma Center in accordance with 77 Ill. Adm. Code 515.2030 or 515.2035. For the purposes of this payment, hospitals located in the same city that alternate their Level I Trauma Center designation in accordance with 89 Ill. Adm. Code 148.295(a)(2)(A) shall each be deemed eligible for the payment under this Section.
  - 2) Payment. Hospitals meeting the qualifying criteria shall receive a supplemental inpatient payment equal to the product of:
    - A) The hospital's Medicaid inpatient days; and
    - B) \$22.00.
- d) Acute Care Across the Board Stimulus Adjustment (ABSA)
  - 1) Qualifying Criteria

An Illinois hospital, with the exception of a large public hospital and a hospital identified in 89 Ill. Adm. Code 149.50(c)(4).
  - 2) Payment. Hospitals meeting the qualifying criteria shall receive a supplemental inpatient payment equal to the product of:
    - A) The hospital's Medicaid inpatient days; and
    - B) \$37.00.
- e) High Volume Medicaid Dependent Provider Stimulus Adjustment (HVMDA)
  - 1) Qualifying Criteria

With the exception of a large public hospital and hospitals identified in 89 Ill. Adm. Code 149.50(c)(1), (c)(2) and (c)(4), an Illinois hospital

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qualifying for designation under 89 Ill. Adm. Code 148.120 or 148.122 for the rate year beginning October 1, 2009 and ending September 30, 2010.

2) Payment. Hospitals meeting the qualifying criteria shall receive a supplemental inpatient payment equal to the product of:

A) The hospital's Medicaid inpatient days; and

B) \$35.00.

f) Adjustments and Limitations

1) The provisions of this Section shall be in effect:

A) Upon approval by the Department of Health and Human Services in the Title XIX State Plan; and

B) As soon as practicable after the effective date of P.A. 96-821; and

C) As long as the payments under Sections 148.440 through 148.456 remain eligible for federal match under an approved State Plan Amendment, but not beyond December 31, 2010.

2) No hospital shall be eligible for payment under this Section that:

A) Ceases operations prior to federal approval of, and adoption of, administrative rules necessary to effect payments under this Section; or

B) Has filed for bankruptcy or is operating under bankruptcy protection under any chapter of USC 11 (Bankruptcy Code); or

C) Discontinues providing a service recognized by one of the payments for which it qualifies; or

D) Surrenders a license or designation recognized by one of the payments, or has a designation or certification revoked by the authorizing agency or entity.

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3) The Department may pay a portion of payments made under this Section in a subsequent State fiscal year to comply with federal law or regulations regarding hospital-specific payment limitations.

g) Definitions. Unless otherwise indicated, the following definitions apply to the terms used in this Section.

"Hospital" means any facility located in Illinois that is required to submit cost reports as mandated in Section 148.210.

"Large public hospital" means a county-owned hospital, as described in Section 148.25(b)(1)(A), a hospital organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B), or a hospital owned or operated by a State agency, as described in Section 148.25(b)(6).

"Medicaid inpatient days" means, for a given hospital, the sum of days of inpatient hospital service provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding days for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), for admissions occurring during State fiscal year 2005 as adjudicated by the Department through March 23, 2007.

"Medicaid obstetrical days" means, for a given hospital, the sum of days of inpatient hospital service provided to Illinois recipients of medical assistance under Title XIX of the federal Social Security Act, assigned a diagnosis related group code of 370 through 375, excluding days for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover day), for admissions occurring during State fiscal year 2005, as adjudicated by the Department through March 23, 2007.

"Outpatient Ambulatory Procedure Listing Payments" means, for a given hospital, the sum of payments for individuals covered under the Title XIX Medicaid State Plan, for its ambulatory procedure listing Group 3 services as described in Section 148.140(b)(1)(C), excluding payments for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through March 23, 2007.

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- h) Rate Reviews  
Rate reviews shall be conducted in accordance with 89 Ill. Adm. Code  
148.458(c)(2).

(Source: Added at 34 Ill. Reg. 17737, effective November 8, 2010)

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- 1) Heading of the Part: Regulations under Illinois Securities Law of 1953
- 2) Code Citation: 14 Ill. Adm. Code 130
- 3) 

<u>Section Numbers</u> :	<u>Adopted Action</u> :
130.848	New
130.849	New
- 4) Statutory Authority: 815 ILCS 5/1
- 5) Effective Date of Amendments: November 3, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file at the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 30, 2010; 34 Ill. Reg. 10697
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: The changes were grammatical in nature and nonsubstantive.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were made or issued.
- 13) Will this rulemaking replace any emergency rulemakings currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: The changes to Section 130.848 regulate advertising by State registered investment advisers. The adopted rule prohibits State registered investment advisers from using any advertisement that contains any untrue statement of material fact or that is otherwise misleading.

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The adopted new Section 130.849 codifies the current Federal Trade Commission requirement that registered investment advisers must have a written consumer privacy policy for their client's information.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Tanya Solov, Director  
Illinois Securities Department  
69 W. Washington St., Suite 1220  
Chicago, IL 60602

312/793-3384

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

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TITLE 14: COMMERCE  
SUBTITLE A: REGULATION OF BUSINESS  
CHAPTER I: SECRETARY OF STATEPART 130  
REGULATIONS UNDER ILLINOIS SECURITIES LAW OF 1953

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130.140	Requirements as to Proper Form
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130.143	Information Unknown or Not Reasonably Available
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## SUBPART B: DEFINITIONS

Section	
130.200	Definitions of Terms Used in the Act and the Rules
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130.202	Definition of the Term "Fractional Undivided Interest", as Used in Section 2.1 of the Act with Reference to Oil and/or Gas Leases, Rights or Royalties
130.205	Definition of the Term "Issuer" as Used in Section 2.2 of the Act as Applied to Fractional Interests in Oil, Gas and Other Mineral Leases, Rights or Royalties
130.210	Definition of Acts Not Constituting a "Sale" or "Offer" as Used in Section 2.5 or 2.5a of the Act
130.211	Definition of Acts Not Constituting an "Offer" of Securities under Section 5, 6, 7 or 8 of the Act
130.212	Definition of Acts Not Constituting an "Offer" Under Section 2.5a of the Act (Testing the Waters)

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- 130.215 Definition of "Commission From an Underwriter or Dealer Not in Excess of the Usual and Customary Distributors' or Sellers' Commissions", as Used in Section 2.6 of the Act for Certain Transactions
- 130.216 Definition of "Participates" and "Participation", as Used in Section 2.6 of the Act in Relation to Certain Transactions
- 130.220 Definition of "Regularly Engaged in Securities Sales Activities", as Used in Section 2.9 of the Act
- 130.221 Exclusion of Certain Persons from the Definition of Investment Adviser in Section 2.11 of the Act
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- 130.233 Definition of the Phrase "Promissory Note or Draft, Bill of Exchange or Bankers' Acceptance" as Used in Section 3(L) of the Act
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- 130.235 Definition, For Certain Purposes, of the Terms "Employee Profit-Sharing Trust or Plan", "Employee Pension Trust or Plan", as Used in Section 3.O of the Act (Repealed)
- 130.241 Definition of the Term "Institutional Investor" under Sections 4C and 4D of the Act
- 130.242 Definition of the Term "Financial Institution" under Section 4.C of the Act
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- 130.245 Definition of the Terms "Balance Sheet" and "Income Statement", as Used in Section 4.F of the Act
- 130.246 Definition of the Terms "Residents of this State", "Aggregate Sales Price" and "Sales Made in Reliance Upon the Exemption" Under Section 4.G of the Act and "General Advertising or General Solicitation" Under Sections 4.G, 4.H, 4.M and 4.R of the Act
- 130.247 Definition of the Term "Public" as Used in Section 4(G)(4) of the Act
- 130.248 Definition of the Terms "Offers for Sale" and "Solicitations of Offers to Buy", as Used in Section 4.L of the Act
- 130.250 Definition, For Certain Purposes, of the Terms "Commissions, Remuneration or Discounts", as Used in Section 4 and Section 5 of the Act
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- 130.270 Definition of Certain Persons Not Considered to Be Dealers Under Section 2.7 of the Act
- 130.280 Definition of the Term "Branch Office" of a Registered Dealer, as Used in Section 8 of the Act
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- 130.282 Definition, For Certain Purposes, of the Term "Officers", as Used in Section 2.9 and Section 8.B.(6) of the Act
- 130.285 Definition, for Certain Purposes, of the Terms "Inequitable", "Tend to Work a Fraud or Deceit", "Inequitable Practice in the Sale of Securities", and "Fraudulent Business Practices", as Used in Section 8 and Section 11 of the Act
- 130.291 Definition of the Terms "Fraudulent" and "Work or Tend to Work a Fraud or Deceit" as Used in Sections 11.E and 12.F of the Act for Purposes of the Payment of Completion Costs in Connection with the Offer or Sale of Securities involving an Oil, Gas or Other Mineral Lease, Right or Royalty

## SUBPART C: FEDERAL COVERED SECURITIES AND TRANSACTIONS

- Section
- 130.293 Issuers of Covered Securities Required to File Notifications and Pay Fees and the Refusal to File Notifications or Pay Fees
- 130.370 Automated Quotation System Deemed to Have Substantially Equivalent Standards for Designation as Required By One or More Exchanges Set Forth in Section 3(G) of the Act (Repealed)

## SUBPART D: EXEMPT TRANSACTIONS

- Section
- 130.420 Uniform Limited Offering Exemption Pursuant to Section 4.D of the Act
- 130.436 Procedures for Applying for Trading Authorization Pursuant to Section 4(F)(2) of the Act
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130.510	Procedures for Registration of Securities by Coordination under Section 5.A of the Act
130.520	Procedures for Registration of Securities by Qualification under Section 5.B of the Act
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130.530	Renewal of Registration of Securities Under Section 5.E of the Act
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130.532	Registration of Additional Securities Pursuant to Section 5(C)(2) of the Act
130.533	Formal Requirements for Amendments Under Section 5 of the Act
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130.538	Withdrawal of Registration Statement, Amendment or Exhibit Filed Under the Federal 1933 Act
130.540	Procedure with Respect to Abandoning Registration Statements, Applications for Trading Authorizations and Post-Effective Amendments
130.550	Additional Fees Under Section 5 of the Act
130.570	Legibility of Prospectuses
130.571	Presentation of Information in Prospectuses
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- 130.600 Preamble
- 130.610 Procedures for Registration of Face Amount Certificate Contracts by Coordination under Section 6.A of the Act
- 130.630 Renewal of Registration of Face Amount Certificate Contracts Under Section 6.F of the Act
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## SUBPART G: INVESTMENT FUND SHARES

- Section
- 130.700 Preamble
- 130.701 Title of Investment Fund Shares Registered Under Section 5 or 7 of the Act
- 130.710 Procedures for Registration of Investment Fund Shares by Coordination under Section 7.A of the Act
- 130.715 Amendatory Statement for the Registration of Additional Class or Classes or the Reporting of a Change in Organization or Operations Pursuant to Section 7(D) of the Act
- 130.730 Renewal of Registration of Investment Fund Shares Under Section 7(G) of the Act
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130.1107	Special Appearance
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130.1111	Requirements Relating to Continuances
130.1112	Rules of Evidence

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## SUBPART O: EVIDENTIARY MATTERS AND NON-BINDING STATEMENTS

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130.1520	Request for Non-Binding Statements

## SUBPART P: SAVINGS PROVISIONS

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130.1661	Investors Syndicate of America, Inc.
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130.1701	Inspection of Applications
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130.1703	Non-Public Distribution of Information

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## NOTICE OF ADOPTED AMENDMENTS

- 130.APPENDIX A Uniform Consent to Service of Process
- 130.APPENDIX B Uniform Application to Register Securities
- 130.APPENDIX C Uniform Application for Broker-Dealer Registration
- 130.APPENDIX D Subordinated Loan Agreement for Equity Capital

AUTHORITY: Implementing and authorized by the Illinois Securities Law of 1953 [815 ILCS 5].

SOURCE: Filed February 23, 1977, effective March 5, 1977; amended at 5 Ill. Reg. 9139, effective August 27, 1981; amended at 6 Ill. Reg. 6455, effective May 19, 1982; codified at 6 Ill. Reg. 12674; emergency amendment at 7 Ill. Reg. 17427, effective December 31, 1983, for a maximum of 150 days; emergency expired May 31, 1984; emergency amendment at 8 Ill. Reg. 1476, effective January 18, 1984, for a maximum of 150 days; emergency expired June 17, 1984; emergency repealer at 8 Ill. Reg. 3803, effective March 14, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 13419, effective July 12, 1984; amended at 8 Ill. Reg. 13840, effective July 19, 1984; emergency amendment at 8 Ill. Reg. 13889, effective July 20, 1984, for a maximum of 150 days; emergency expired December 17, 1984; amended at 9 Ill. Reg. 208, effective December 20, 1984; emergency amendment at 10 Ill. Reg. 393, effective January 1, 1986, for a maximum of 150 days; emergency expired May 30, 1986; amended at 10 Ill. Reg. 10753, effective June 3, 1986; recodified at 10 Ill. Reg. 19554; emergency amendment at 13 Ill. Reg. 11017, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 14 Ill. Reg. 884, effective December 30, 1989; amended at 14 Ill. Reg. 5188, effective March 26, 1990; emergency amendment at 15 Ill. Reg. 14303, effective November 1, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 6000, effective March 27, 1992; amended at 20 Ill. Reg. 14185, effective October 21, 1996; amended at 21 Ill. Reg. 7523, effective May 23, 1997; amended at 21 Ill. Reg. 7770, effective May 23, 1997; amended at 21 Ill. Reg. 8415, effective June 20, 1997; emergency amendment at 21 Ill. Reg. 9828, effective July 8, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 15892, effective December 1, 1997; amended at 22 Ill. Reg. 1933, effective January 1, 1998; emergency amendment at 24 Ill. Reg. 341, effective December 31, 1999, for a maximum of 150 days; amended at 24 Ill. Reg. 7401, effective May 1, 2000; emergency amendment at 25 Ill. Reg. 973, effective January 1, 2001, for a maximum of 150 days; emergency expired May 30, 2001; amended at 25 Ill. Reg. 8817, effective July 6, 2001; amended at 26 Ill. Reg. 14843, effective September 30, 2002; amended at 27 Ill. Reg. 9490, effective June 9, 2003; emergency amendment at 29 Ill. Reg. 15087, effective September 23, 2005, for a maximum of 150 days; emergency expired February 19, 2006; emergency amendment at 30 Ill. Reg. 13009, effective July 11, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18211, effective October 31, 2006; amended at 33 Ill. Reg. 12817, effective September 8, 2009; amended at 34 Ill. Reg. 17783, effective November 3, 2010.

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## NOTICE OF ADOPTED AMENDMENTS

## SUBPART H: REGISTRATION OF DEALERS, SALESPERSONS AND INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

**Section 130.848 Advertisements by Investment Advisers**

- a) It shall be a fraudulent business practice under Section 8 of the Act for any investment adviser registered or required to be registered under the Act, directly or indirectly, to publish, circulate, or distribute in any manner any advertisement:
- 1) That refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser; or
  - 2) That refers, directly or indirectly, to past specific recommendations of an investment adviser that were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement that sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one year if the advertisement, and the list, if it is furnished separately:
    - A) state the name of each security recommended, the date and nature of each recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price upon which the recommendation was to be acted, and the market price of each security as of the most recent practicable date; and
    - B) contain the following cautionary legend on the first page in print or type as large as the largest print or type used in the body or text: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."; or
  - 3) That represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or that represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his or her own decisions as to which securities to buy or sell, or when to buy or sell them, without

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prominently disclosing in the advertisement the limitations and the difficulties with respect to its use; or

- 4) That contains any statement to the effect that any report, analysis or other service will be furnished free or without charge, unless the report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or
  - 5) That contains any untrue statement of a material fact, or that is otherwise false or misleading.
- b) For the purposes of this Section, the term advertisement shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, or any electronically available or distributed communication that offers:
- 1) Any analysis, report, or publication concerning securities, or that is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
  - 2) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
  - 3) Any other investment advisory service with regard to securities.

(Source: Added at 34 Ill. Reg. 17783, effective November 3, 2010)

**Section 130.849 Consumer Information Privacy Provisions**

An investment adviser, registered or required to be registered pursuant to Section 8.D of the Act, shall comply with the privacy provisions of subtitle A of Title V of the federal Gramm-Leach-Bliley Act (15 USC 6801-09) and the Federal Trade Commission regulations at 16 CFR 313 (Privacy of Consumer Financial Information).

(Source: Added at 34 Ill. Reg. 17783, effective November 3, 2010)

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of November 2, 2010 through November 8, 2010 and have been scheduled for review by the Committee at its December 14, 2010 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>
12/17/10	<u>Illinois Racing Board</u> , Advance Deposit Wagering (ADW) (11 Ill. Adm. Code 325)	9/17/10 34 Ill. Reg. 13298	12/14/10
12/18/10	<u>Department of Children and Family Services</u> , Reports of Child Abuse and Neglect (89 Ill. Adm. Code 300)	8/6/10 34 Ill. Reg. 10943	12/14/10
12/22/10	<u>Department of Healthcare and Family Services</u> , Medical Assistance Programs (89 Ill. Adm. Code 120)	2/19/10 34 Ill. Reg. 2631	12/14/10
12/22/10	<u>Department of Healthcare and Family Services</u> , Medical Payment (89 Ill. Adm. Code 140)	2/19/10 34 Ill. Reg. 2646	12/14/10
12/22/10	<u>Department of Agriculture</u> , Illinois Pesticide Act (8 Ill. Adm. Code 250)	8/6/10 34 Ill. Reg. 10937	12/14/10
12/22/10	<u>Teachers' Retirement System of the State of Illinois</u> , The Administration and Operation of the Teachers' Retirement System (80 Ill. Adm. Code 1650)	7/16/10 34 Ill. Reg. 9743	12/14/10
12/22/10	<u>Teachers' Retirement System of the State of Illinois</u> , The Administration and Operation of the Teachers' Retirement System (80 Ill. Adm.	7/30/10 34 Ill. Reg. 10710	12/14/10

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

Code 1650)

12/22/10	<u>Secretary of State</u> , Illinois Safety Responsibility Law (92 Ill. Adm. Code 1070)	9/17/10 34 Ill. Reg. 13300	12/14/10
12/22/10	<u>Pollution Control Board</u> , Organic Material Emission Standards and Limitations for the Chicago Area (35 Ill. Adm. Code 218)	9/10/10 34 Ill. Reg. 13020	12/14/10
12/22/10	<u>Pollution Control Board</u> , Organic Material Emission Standards and Limitations for the Metro East Area (35 Ill. Adm. Code 219)	9/10/10 34 Ill. Reg. 13047	12/14/10

## JOINT COMMITTEE ON ADMINISTRATIVE RULES

## NOTICE OF PUBLICATION ERROR

## DEPARTMENT OF PUBLIC HEALTH

- 1) Heading of the Part: Automated External Defibrillator Code
- 2) Code Citation: 77 Ill. Adm. Code 525
- 3) Illinois Register citation to Notice of Proposed Rules: 34 Ill. Reg. 15779; October 15, 2010
- 4) Explanation: In subsection 545.400(b), the phrase "or equivalent curriculum approved by the Department" should have been stricken in the rule text published in the Illinois Register as the agency's copy submitted to the Secretary of State for publication showed. JCAR regrets this error.

The corrected subsection should read as follows:

Recognition of training completed in accordance with this Section shall be valid for a time period in accordance with the courses of instruction referenced in subsections (a)(1) and (2) of this Section, but not be valid for more than two years. To renew recognition as a trained AED user, the individual shall present proof of satisfactory completion of an American Red Cross or American Heart Association or other nationally recognized renewal course ~~or equivalent curriculum approved by the Department.~~

**ILLINOIS ADMINISTRATIVE CODE**  
**Issue Index - With Effective Dates**

Rules acted upon in Volume 34, Issue 47 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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