

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 1) The Heading of the Part: Procedures For Providing Financial Assistance From The Water Pollution Control Loan Program Under The American Recovery And Reinvestment Act Of 2009
  
- 2) Code Citation: 35 Ill. Adm. Code 369
  
- 3) 

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Rules:
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency rule is not set to expire before the end of the 150-day period.
- 7) Date Filed with the Index Department :
- 8) A copy of the emergency rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: Emergency rules are necessary so the Agency can quickly meet its obligations under the American Recovery and Reinvestment Act of 2009 (ARRA) which was signed into law by the president on February 17, 2009 to get economic stimulus money out to shovel ready projects. Also, pursuant to 415 ILCS 5/19.4(d), the Agency is required to adopt emergency rules as necessary to allow for the timely administration of funds provided under the ARRA. Identical rules will also be submitted

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

for publication in the *Illinois Register* through the general rulemaking process by the Agency.

- 10) A complete Description of the Subjects and Issues Involved: This rulemaking will address how the Agency will disburse monies received under the ARRA. This rulemaking will establish a fixed loan rate at 0.00% and will also provide a more streamlined approach for the loan application process so money can quickly be distributed to shovel ready projects in accordance with the ARRA.
- 11) Are there any Proposed amendments to this Part pending? Yes
- 12) Statement of Statewide Policy Objectives: This rulemaking will not create a State mandate for units of local government.
- 13) Information and questions regarding this rule shall be directed to:

Stefanie N. Diers  
Assistant Counsel  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19726  
Springfield, Illinois 62794-9276  
217/782-5544

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

PART 369

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

SUBPART A: INTRODUCTION

Section

369.110 Purpose

EMERGENCY

369.120 Administration

EMERGENCY

369.130 Definitions

EMERGENCY

369.140 Incorporations by Reference

EMERGENCY

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

Section

369.210 Uses of the Water Pollution Control Loan Program

EMERGENCY

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

EMERGENCY

369.230 Requirements for Loan Recipients under Title VI of the CWA

EMERGENCY

369.240 Green Project Reserve

EMERGENCY

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

Section

369.310 Noncompliance with Loan Procedures

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

EMERGENCY

369.320 Stop-Work Order

EMERGENCY

369.330 Termination

EMERGENCY

369.340 Waiver of Procedures

EMERGENCY

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section

369.410 Project Priority Determination

EMERGENCY

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

EMERGENCY

369.430 Financial Assistance Application and Approval

EMERGENCY

369.440 Fixed Loan Rate

EMERGENCY

369.450 Refinancing

EMERGENCY

369.460 Limitation on Design Cost

EMERGENCY

369.470 Limitation of Financial Assistance

EMERGENCY

369.480 Principal Forgiveness

EMERGENCY

SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section

369.510 Loan Applicant's Responsibilities During Facilities Planning

EMERGENCY

369.520 State Environmental Review

EMERGENCY

369.530 Limitations on Awards for Individual Systems

EMERGENCY

369.540 Areawide Waste Treatment Management Planning

EMERGENCY

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section

369.610 Requirements for Subagreements

EMERGENCY

369.620 Construction Contracts

EMERGENCY

369.630 Contracts for Personal and Professional Services

EMERGENCY

369.640 Compliance with Procurement Requirements for Construction Contracts

EMERGENCY

369.650 Disputes

EMERGENCY

369.660 Indemnity

EMERGENCY

369.670 Covenant Against Contingent Fees

EMERGENCY

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

Section

369.710 Construction Initiation

EMERGENCY

369.720 Project Changes

EMERGENCY

369.730 Construction Engineering

EMERGENCY

369.740 Operation and Maintenance of the Project

EMERGENCY

369.750 Final Inspection

EMERGENCY

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

Section

369.810 Access

EMERGENCY

369.820 Audit and Records

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

EMERGENCY

369.830 Single Audit Act

EMERGENCY

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

Section

369.910 Sewer Use Ordinance

EMERGENCY

369.920 User Charges

EMERGENCY

369.930 Financial Capability

EMERGENCY

369.940 Dedicated Source of Revenue

EMERGENCY

369.950 Floodplain Insurance

EMERGENCY

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

Section

369.1010 Determination of Allowable Costs

EMERGENCY

369.1020 Use of Loan Funds and Payment of Unallowable Costs

EMERGENCY

369.1030 Disbursement of Loan Funds

EMERGENCY

SUBPART K: PROCEDURES FOR LOAN REPAYMENT  
AND DELINQUENT REPAYMENT

Section

369.1110 Loan Repayment to the Agency

EMERGENCY

369.1120 Delinquent Loan Repayments

EMERGENCY

369.APPENDIX A Executive Orders

369.EXHIBIT A Executive Order 12549

EMERGENCY

369.EXHIBIT B Executive Order 11246

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

EMERGENCY

369.APPENDIX B

Loan Application Form

EMERGENCY

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: Emergency Rule adopted at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days.

SUBPART A: INTRODUCTION

**Section 369.110 Purpose**

**EMERGENCY**

- 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 local government unit as the recipient of a loan.
- b) Part 365 sets forth procedures to be used by the Illinois Environmental Protection Agency to operate the Water Pollution Control Loan Program (WPCLP), including the issuance of loans for the construction of wastewater treatment works as authorized by P.A. 85-1135, effective September 1, 1988 and amended by P.A. 90-121, effective July 17, 1997.
- c) The American Recovery and Reinvestment Act of 2009 (ARRA) provides a source of capitalization grants to the states to provide loans, as well as additional subsidization including forgiveness of principal, negative interest loans, and grants to eligible applicants for the construction of wastewater facilities. This Part 369 sets out procedures the Agency shall use to provide financial assistance from the ARRA which shall be administered through the WPCLP.

**Section 369.120 Administration**

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

**EMERGENCY**

- a) The WPCLP, an interest-bearing special fund, will be administered by the Agency as an instrumentality of the State of Illinois in accordance with the Operating and Capitalization Grant Agreements between the Agency and the USEPA in accordance with State and federal laws. All funds from the ARRA for the construction of wastewater facilities will be administered through the WPCLP.
- b) Copies of forms that are required and sample language that can be used to satisfy the requirements of an ARRA financial application administered through the authority of the WPCLP can be obtained from the Illinois Environmental Protection Agency, Infrastructure Financial Assistance Section, 1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276 or found on the Agency's website at [www.epa.state.il.us](http://www.epa.state.il.us).
- c) The program requirements of the ARRA shall take precedent on projects receiving financial assistance from both the ARRA and the WPCLP.

**Section 369.130 Definitions**

**EMERGENCY**

- 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 369, 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).

Binding Commitment – A legal obligation between the Agency and a local government unit to provide financial assistance from the WPCLP to that local government unit, specifying the terms and schedules under which

## ILLINOIS REGISTER

---

### ENVIRONMENTAL PROTECTION AGENCY

#### NOTICE OF EMERGENCY RULES

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 the USEPA.

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

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

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

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

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

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

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

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

Director – Director of the Illinois Environmental Protection Agency.

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

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

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

Fund – The Water Revolving Fund as authorized by [415 ILCS 5/19.3],

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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 reduce overall imperviousness in a watershed. On the local scale green infrastructure consist of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

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

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

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

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

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

Loan Agreement – The contractual agreement between the Agency and the local government unit that contains the terms and conditions governing the

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

loan issued from the WPCLP.

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

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

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

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

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

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

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

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

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

Project Priority List – An ordered listing of projects developed in

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

accordance with the priority system described in 35 Ill. Adm. Code 366 (Procedures and Requirements for Determining Loan Priorities for Municipal Wastewater Treatment Works) that the Agency has determined are eligible to receive financial assistance from the WPCLP.

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

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

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

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

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

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

*facilities.* [415 ILCS 5/19.2(f)].

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

USEPA – The United States Environmental Protection Agency.

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

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

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

**Section 369.140 Incorporations by Reference**  
**EMERGENCY**

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

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

**Section 369.210 Uses of the Water Pollution Control Loan Program**  
**EMERGENCY**

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 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)]*

**Section 369.220 Agency Responsibilities under Title VI of the CWA**  
**EMERGENCY**

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 8) Annual reporting to the USEPA on the Agency's progress toward meeting its goals and objectives;
- 9) An annual audit of the WPCLP in accordance with the auditing procedures of the General Accounting Office (75 USC 31); and
- 10) The Agency shall act in accordance with the requirements established under the ARRA.

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

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

**Section 369.240 Green Project Reserve  
EMERGENCY**

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

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

**Section 369.310 Noncompliance with Loan Procedures  
EMERGENCY**

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

capable of complying with the approved project work.

**Section 369.320 Stop-Work Order  
EMERGENCY**

- a) In the event of any violation of this Part 369 or non-compliance with the terms of the loan agreement, the Agency may, by written order, require the loan recipient to stop all or any part of the project work for a period of not more than 30 days after the date of the order, and for any further period to which the parties may agree. Any such order shall include a list of the project activities to which it applies. Upon receipt of a stop-work order, the loan recipient shall immediately comply with its terms and shall minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within 30 days after the date of the stop-work order, or within the period of any extension to which the parties have agreed, the Agency shall:
  - 1) Cancel the stop-work order upon resolution of the violation or cause leading to that stop-work order; or
  - 2) Terminate the work covered by the stop-work order, as provided in Section 369.330(a) of this Subpart.
- b) If a stop-work order is cancelled or the period of the order or any extension thereof expires, the loan recipient shall resume work. An adjustment may be made in the loan period, the project period, the loan amount, or any combination of these, and the loan amended accordingly, if the loan recipient asserts a written claim for such an adjustment within 30 days after the end of the work stoppage.
- c) All costs that are incurred by the loan recipient after the receipt of a stop-work order, or during any extension of the stop-work order period to which the Agency and the loan recipient have agreed, shall be deemed unallowable costs unless otherwise authorized by the Agency in writing or authorized under the loan procedures.

**Section 369.330 Termination  
EMERGENCY**

- a) Loan Termination by the Agency  

The Agency, by written notice to the loan recipient, may terminate the loan in

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

whole or in part. Cause for termination shall include, but not be limited to, failure by the loan recipient to comply with the terms and conditions of the loan. Upon loan termination, the loan recipient shall refund any unexpended loan funds to the State of Illinois to be deposited in the WPCLP, except for such portion as may be required to pay the allowable cost of materials and equipment furnished or services rendered under an enforceable contract prior to the effective date of the termination.

b) Project Termination by the Loan Recipient

A loan recipient who wishes to terminate a project for which the loan has been provided must submit a written request to the Agency that documents good cause for the proposed termination. If the Agency agrees that there is good cause for termination of all or any portion of the project, it shall enter into a termination agreement with the loan recipient or unilaterally terminate the loan. If the Agency finds that the loan recipient has terminated the project without good cause, it shall declare the loan in default, and all loan funds previously paid to the loan recipient, together with interest on the loan, shall be returned to the State of Illinois in accordance with a schedule established by the Agency for deposit into the WPCLP. Good cause to terminate a loan project includes, but is not limited to:

- 1) Changes in economic circumstances within the loan recipient's service area; and
- 2) Information that the approved treatment technology will not perform as originally anticipated.

**Section 369.340 Waiver of Procedures**

**EMERGENCY**

- 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:

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 1) Section 369.410 (Project Priority Determination) of this Part
- 2) Section 369.440 (Fixed Loan Rate) of this Part
- 3) Section 369.510 (Loan Applicant's Responsibilities During Facilities Planning) of this Part
- 4) Section 369.520 (State Environmental Review) of this Part
- 5) Section 369.550 (Limitations on Awards for Individual Systems) of this Part
- 6) Section 369.560 (Areawide Waste Treatment Management Planning) of this Part
- 7) Section 369.620(d)(3) (Wage Provisions) of this Part
- 8) Section 369.620(d)(4) (Disadvantaged Business Enterprise Requirements) of this Part
- 9) Section 369.620(d)(5) (Debarment and Suspension Certification) of this Part
- 10) Section 369.630(a)(1) (Disadvantaged Business Enterprise Requirements) of this Part
- 11) Section 369.630(a)(4) (Debarment and Suspension Certification) of this Part
- 12) Section 369.750 (Operation and Maintenance of the Project) of this Part
- 13) Section 369.910 (Sewer Use Ordinance) of this Part
- 14) Section 369.920 (User Charges) of this Part
- 15) Section 369.940 (Dedicated Source of Revenue) of this Part

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

**Section 369.410 Project Priority Determination**  
**EMERGENCY**

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

**Section 369.420 Pre-applications for Financial Assistance and Identification of Projects to be Funded**  
**EMERGENCY**

- a) Every loan applicant shall submit to the Agency a signed and dated pre-application form that includes at a minimum the following items:
  - 1) Legal name of applicant;
  - 2) Address;
  - 3) Authorized representative-name and title;

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

**Section 369.430 Financial Assistance Application and Approval**  
**EMERGENCY**

- a) In order to receive a loan commitment letter for financial assistance under the ARRA, the following documentation shall be submitted by the loan applicant and approved by the Agency:
  - 1) Facilities Plan that meets the requirements of Section 369.510 (Loan Applicant's Responsibilities During Facilities Planning) and 369.520 (State Environmental Review);
  - 2) Design documents including plans and specifications with a construction permit if applicable;

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 3) An enacted ordinance or other legally binding instrument authorizing the bonds, notes, security agreements or other evidence of indebtedness and an approved user charge system in accordance with Section 369.920 (User Charges) of this Part and documentation to support the loan applicant's ability to repay the loan in accordance with Section 369.930 (Financial Capability) and Section 369.940 (Dedicated Source of Revenue) of this Part;
  - 4) A loan application form (Appendix B);
  - 5) An EPA Form 4700-4, Compliance Report; and
  - 6) An executed contract for design and construction related work in accordance with Section 369.630 (Contracts for Personal and Professional Services) of this Part if financing is being requested for these specific costs.
- b) In addition to the items identified in Subsection (a), the Agency must have received the following bid documentation prior to the issuance of the Loan Agreement:
- 1) A certified copy of the published bid advertisement(s);
  - 2) Any addenda by the loan applicant, if applicable;
  - 3) A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR Part 33;
  - 4) A copy of the bid tabulations;
  - 5) An analysis of the bids and recommendations for the award of the bids;
  - 6) A copy of the successful bid proposals;
  - 7) The notice of the applicant's intent to award; and
  - 8) A certification from the loan applicant that all other bid requirements have been satisfied, including bid bond requirements and other certifications as required by State and federal law.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

**Section 369.440 Fixed Loan Rate**  
**EMERGENCY**

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

**Section 369.450 Refinancing**  
**EMERGENCY**

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

**Section 369.460 Limitation on Design Cost**  
**EMERGENCY**

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

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

**Section 369.470 Limitation on Financial Assistance**

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

**EMERGENCY**

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

**Section 369.480 Principal Forgiveness**

**EMERGENCY**

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

**SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS**

**Section 369.510 Loan Applicant's Responsibilities During Facilities Planning**

**EMERGENCY**

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

project. If substantial changes have occurred which warrant revision or amendment as specified in Section 369.520 (State Environmental Review) of this Subpart, the plan shall be revised or amended and resubmitted for review and approval in accordance with the provisions of Section 369.520 (State Environmental Review) 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 complete waste treatment system or systems of which the proposed wastewater treatment works is a part, identification of any existing violations of federal or State wastewater regulations and identification of the needs to be addressed by the proposed project.
  - 2) A discussion of the technical, financial, managerial, and environmental considerations that form the basis for the applicant's selection of the recommended project including an evaluation regarding the elimination of infiltration and inflow where applicable. When appropriate to the project scope, the following issues shall be addressed:
    - A) The relationship of the nature, size and capacity of the selected alternative to the needs to be served, including reserve capacity;
    - B) Identification of current and proposed effluent discharge limitations and water quality standards for the proposed wastewater treatment works as required by Title IV of the CWA and 35 Ill. Adm. Code: Subtitle C;
    - C) A discussion of the operational requirements of the selected alternative and provisions for the ultimate disposal of sludge materials from the wastewater treatment process;
    - D) An inventory of the relative environmental impacts of the selected alternative and a discussion of the measures that would be required during design and construction to mitigate or minimize negative environmental impacts; and

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- E) Adequate basis of design information for the selected alternative to confirm the reasonability of cost estimates.
- 3) A detailed description of the alternative selected for loan assistance, including preliminary engineering data, complete cost estimates for design and construction, one or more 8.5 by 11 inch site map(s) locating areas of construction and/or indirect impacts, and a projected schedule for completion. The engineering data shall include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit capacities, etc., sufficient to demonstrate that the proposed project will be designed in accordance with 35 Ill. Adm. Code 370.
- 4) Evidence of consultation with relevant federal, State, regional or local agencies, with documentation of project approval where required.
- 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for the operation and maintenance of the wastewater treatment system and repayment of the proposed loan amount, as well as the impact of these costs on the system users.

**Section 369.520 State Environmental Review**  
**EMERGENCY**

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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 will be held within 30 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 announced at least 10 days before the hearing. In addition, the Agency's PEID document shall be displayed at a convenient local site sufficiently prior to the hearing to obtain a level of public participation appropriate to the scope and impacts of the proposed project.
- g) The loan applicant shall provide the Agency with an accurate summary of all public comments received, together with any proposed amendments to the plan made in response to these comments.
- h) Upon receipt of this public hearing summary and after the expiration of the 10 day written comment period, the Agency shall issue:
  - 1) An unconditional approval of the plan (original or as amended); or
  - 2) A conditional approval of the plan with special conditions; or
  - 3) A disapproval of the plan based on evidence of significant negative environmental impacts for which appropriate mitigative measures have not been identified; or
  - 4) A determination of the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (42 USC 4332). The Agency may change its disapproval to approval or conditional approval

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

based on the recommendations of the EIS.

- i) For projects categorically excluded from the environmental review process, the Agency shall provide to the applicant a Notice of Intent to Issue a Categorical Exclusion. The applicant shall 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 10 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 potential environmental impacts, the Agency shall proceed with an environmental review under this Section 369.520 or issue a conditional approval where the applicant incorporates mitigative measures that would clearly resolve the environmental concerns.
- j) Additions to the project scope or changes to the location of proposed construction activity shall require an amendment to an approved facilities plan. Where the Agency determines that the proposed changes will not alter the previous environmental impacts findings, it will approve planning amendments by letter. In other cases, additional environmental review and public comment may be required.
- k) Agency facilities planning determinations made in accordance with subsection (h) of this Section shall be subject to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

**Section 369.530 Limitations on Awards for Individual Systems**

**EMERGENCY**

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

**Section 369.540 Areawide Waste Treatment Management Planning**

**EMERGENCY**

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

**Section 369.610 Requirements for Subagreements**  
**EMERGENCY**

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 WPCLP/ARRA. Any procurement method, except as allowed under this Part 369, 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/ARRA loans.

b) Profits

Only fair and reasonable profits may be earned by contractors in subagreements under WPCLP/ARRA loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 369.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.

c) Loan Recipient Responsibility

The loan recipient shall be responsible for the administration and successful accomplishment of the project for which WPCLP/ARRA loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. Such an individual or firm shall be deemed the loan recipient's agent, and shall be subject to all the provisions of the loan agreement, including this Part 369, that apply to the loan recipient.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

d) Privity of Contract

Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts), or to any solicitation or request for proposals under those subagreements.

e) Subagreements shall:

- 1) Be directly related to the accomplishment of the loan recipient's approved work program;
- 2) Be in the form of an executed written agreement (except for small purchases of \$25,000 or less);
- 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 369.820 (Audit and Records) of this Part.

g) Subagreements shall only be awarded to persons or organizations that:

- 1) Have adequate financial resources for performance;

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ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 2) Have the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain these requirements;
  - 3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;
  - 4) Have a satisfactory record of integrity, judgment, and performance;
  - 5) Have an adequate financial management system and audit procedure which is consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards;
  - 6) Maintain a standard of procurement in accordance with this Part 369;
  - 7) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
  - 8) Conform to the civil rights, equal employment opportunity (Appendix A, Exhibit B) and labor law requirements of this Part 369.
- h) Fraud and Other Unlawful or Corrupt Practices
- 1) The obtaining and administration of loans from the WPCLP/ARRA, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks, and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.
  - 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices brought to its attention. The loan recipient shall advise the Agency immediately when any allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any matter.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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:

- 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.

**Section 369.620 Construction Contracts**  
**EMERGENCY**

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.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 369.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:

1) Evidence of advertising

The loan recipient shall submit to the Agency a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for providing financial assistance from the WPCLP under the ARRA as set out in this Part 369, the Davis-Bacon Act [40 USC 276a through 276a-5] as defined by the U.S. Department of Labor, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order 11246, as amended (Appendix A, Exhibit B). Bidders shall be notified that the procurement will be subject to the loan recipient's policy regarding the increased use of disadvantaged business enterprises, and that the bidders will be required to comply with Section 1605 of the ARRA, which specifies that all iron, steel and manufactured goods used in the project are produced in the United States.

2) Adequate bidding documents

Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:

- A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (Drawings and specifications may be made available for inspection instead of being furnished.);
- B) The terms and conditions of the contract to be awarded;
- C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G); or

- ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that the persons determining the prices have not participated, and will not participate, in any action contrary to subsection (b)(2)(G), and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G).

3) Addenda to bidding documents

If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the loan applicant shall send written addenda to all firms who have obtained bidding documents in time to be considered prior to the bid opening. When appropriate, the time period for submission of bids shall be extended. All addenda to the bidding documents shall be submitted to the Agency for approval prior to the bid opening.

4) Award to the low, responsive, responsible bidder

- A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award, and the loan applicant's letter of intent to award or the official minutes of board approval.
- B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan applicant.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

c) Negotiations of Contract Amendments (Change Orders)

1) Loan recipient responsibility

The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:

- A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
- B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
- C) Maintain a summary of all negotiations and the engineer's independent cost estimate.

2) Changes in contract price or time

The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).

3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

4) Agency review

For each change order, the loan recipient shall submit to the Agency for approval the following documentation:

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.

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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

be exercised under any type of contract or subcontract:

- i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
- ii) If there is any indication that fraud, gross abuse, or corrupt practices may be involved in the award or performance of the contract or subcontract.

2) Covenant against contingent fees.

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

3) Wage provisions

The contractor shall pay prevailing wages in accordance with the Davis-Bacon Act [40 U.S.C 276a through 276a-5] as defined by the U.S. Department of Labor.

4) Disadvantaged Business Enterprise requirements

The contractor shall provide evidence, including, but not limited to, a copy of the advertisement(s) and the record of negotiation, that the contractor has taken affirmative steps in accordance with 40 CFR Part 33 to assure disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services consistent with the provisions of the Agency's Operating Agreement with USEPA.

5) American Iron, Steel and Manufactured Goods provisions

The contract shall require the successful bidder(s) to certify compliance with Section 1605 of the ARRA, which specifies that all iron, steel and manufactured goods used in the project are produced in the United States.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

6) Debarment and suspension provisions

The contract shall require the successful bidder(s) to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).

7) Nonsegregated facilities provisions

The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.

e) Subcontracts under construction contracts

The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with:

1) All applicable provisions of federal, State and local law;

2) All provisions of this Part 369 regarding fraud and other unlawful or corrupt practices;

3) All provisions of this Part 369 with respect to access to facilities, records and audit of records; and

4) All provisions of subsection (d)(6) that require a "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).

f) Contractor Bankruptcy

In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

**Section 369.630 Contracts for Personal and Professional Services**  
**EMERGENCY**

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 Part 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:
    - A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
    - B) Books, records, documents and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
    - C) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
    - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

shall include the written comments, if any, of the audited parties.

- E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 369.650 (Disputes) of this Subpart, litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception.
- 3) A covenant against contingent fees clause as follows:

"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 A).
  - 5) A description of the scope and extent of the project work.
  - 6) The schedule for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks.
  - 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- c) If, at the time of contract execution, any of the elements required in this Section 369.630 cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

**Section 369.640 Compliance with Procurement Requirements for Construction Contracts**  
**EMERGENCY**

- a) Loan Applicant Responsibility

The loan applicant shall be responsible for selecting the low, responsive, and responsible bidder or other contractor in accordance with applicable requirements of State, federal, and local laws and ordinances, as well as for the specific requirements of the loan agreement directly affecting procurement. The loan applicant shall also be responsible for the initial resolution of complaints based upon alleged violations. Any complaints made to the Agency concerning any alleged violation of law in the procurement of construction services or materials for a project involving construction work will be referred to the loan applicant for resolution. The loan applicant shall promptly determine each complaint on its merits, and shall allow the complainant and any other party who may be adversely affected to state in writing or at a conference the basis for their views concerning the proposed procurement. The loan applicant shall promptly furnish to the complainant and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering or legal opinion, providing a justification for its determination.

- b) Time Limitations

Complaints should be made as early as possible during the procurement process, preferably prior to the bid opening, to avoid disruption of the procurement process. The complaint shall be mailed (certified mail, return receipt requested), or otherwise delivered, no later than 5 working days after the complainant becomes aware of an alleged violation. If there is no agreement between the parties within 7 days following the loan applicant's response, unless all bids are rejected, the matter shall be resolved in accordance with Subsection (c).

- c) Remedies

All claims, counter-claims, disputes and other matters in question between the applicant and the contractor arising out of, or relating to, a subagreement or its breach shall be decided by arbitration if the parties agree, or in a court of

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

competent jurisdiction within the State.

d) Deferral of Procurement Action

If the determination of a complaint by the loan applicant is adverse to the complainant, the loan applicant shall defer issuance of its solicitation or award or notice to proceed under the contract, as appropriate, for 7 days after mailing or delivery of the determination. If the determination (whether made by the loan applicant, the arbitrator or the court) is favorable to the complainant, the terms of the solicitation shall be revised or the contract shall be awarded, as appropriate, in accordance with the determination.

**Section 369.650 Disputes**

**EMERGENCY**

- a) Only the loan recipient may appeal to the Agency in its own name and for its own benefit, under this provision, with respect to its subagreements. Neither a contractor nor a subcontractor may prosecute an appeal under the disputes provision of a loan in its own name or interest.
- b) Any dispute arising under this loan that is not disposed of by agreement shall be decided by the Director, or his or her authorized representative, who shall render a decision in writing and mail or otherwise furnish it to the loan recipient. The decision of the Director shall be in accordance with this Part 369 and shall be final and conclusive.
- c) The disputes clause shall not preclude the Director from considering questions of law in any decision.

**Section 369.660 Indemnity**

**EMERGENCY**

The loan recipient shall assume the entire risk, responsibility and liability for all loss or damage to property owned by the loan recipient, by the Agency or by third persons, and for any injury to or death, of any persons (including employees of the loan recipient) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of the WPCLP/ARRA loan. The loan recipient shall indemnify, save harmless and defend the State of Illinois and the Agency from all claims for loss, damage, injury or death, whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise, consistent with the provisions of Section 1 of the Construction Contract Indemnification for Negligence Act

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

[740 ILCS 35/1]. The loan recipient shall require that all its contractors and subcontractors agree in writing that they will look solely to the loan recipient for performance of the contract or satisfaction of all claims arising under the contract.

**Section 369.670 Covenant Against Contingent Fees**

**EMERGENCY**

The loan recipient shall warrant that no person or agency has been employed or retained to solicit or secure a WPCLP/ARRA loan upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul the loan in accordance with Section 369.310 (Noncompliance with Loan Procedures) of this Part or to deduct from the loan, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

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

**Section 369.710 Construction Initiation**

**EMERGENCY**

Upon approval by the Agency of the loan applicant's financial assistance application in accordance with Section 369.430 (Financial Assistance Application and Approval) of this Part, and subject to the availability of funds, the Agency will issue the loan agreement and authorize the initiation of construction.

**Section 369.720 Project Changes**

**EMERGENCY**

- a) Prior approval of the Agency is required for any project change that may:
  - 1) Increase the amount of loan funds needed to complete the project;
  - 2) Alter the design or scope of the project;
  - 3) Extend any contract or loan completion date for the project;
  - 4) Alter the location, size, capacity or quality of any major item of equipment; or
  - 5) Alter the scope of the project by changing the methodologies or personnel

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

to be used as agreed to at the time the loan was issued.

- b) The Agency will approve project changes that it determines are cost-effective and within the overall scope of the loan project, based on approved facilities planning.
- c) The loan recipient shall promptly notify the Agency, in writing, of all project changes. Failure to give timely notice of proposed project changes or action by the loan recipient that is not consistent with the Agency's determination on such changes may result in:
  - 1) Disallowance of loan participation for costs incurred that are attributable to the change; and
  - 2) Termination of the loan.

**Section 369.730 Construction Engineering  
EMERGENCY**

The loan recipient shall provide construction engineering and project monitoring to assure that the construction substantially conforms with the approved plans and specifications.

**Section 369.740 Operation and Maintenance of the Project  
EMERGENCY**

In order for the Agency to approve the final inspection for the project, the loan recipient must certify that it has provided the following training and operation and maintenance documents:

- a) Training pertaining to the proper operation and maintenance of the equipment and process units included in the project.
- b) An operation and maintenance reference library that includes, but is not limited to, the following:
  - 1) Manufacturer's literature, shop drawings and warranties;
  - 2) The plans of record with valve indices for the equipment and process units included in the project. For mechanical wastewater treatment plants, the valve index shall include a listing of valve positions for each possible alternate flow configuration including by-passing of individual treatment processes and units and recommended configurations for emergency

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

conditions that could reasonably be expected to occur; and

- 3) A maintenance schedule for the equipment and process units included in the project.
- c) Training pertaining to the general operation of treatment plants or collection systems consisting of an operator self-study course such as "Operation of Wastewater Treatment Plant", 1980, 2<sup>nd</sup> edition (three volumes) or "Operation and Maintenance of Wastewater Collection System", 1983, 1<sup>st</sup> edition, California State University, Sacramento.

**Section 369.750 Final Inspection**  
**EMERGENCY**

The loan recipient shall notify the Agency in writing within 30 days after completion of project construction and shall submit the final change order, along with the contractor's final costs, to the Agency. The plans of record shall be forwarded to the appropriate Agency regional office. The Agency shall schedule the final inspection within 60 days after receipt of the notice of completion, provided that all necessary change orders have been submitted and approved.

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

**Section 369.810 Access**  
**EMERGENCY**

- a) The Agency and its designated representatives shall have access, during normal business hours and at any other time during which work is being performed, to the premises where any portion of the work for which the WPCLP/ARRA loan was provided is being performed. After final loan closing, Agency personnel or any authorized Agency representative shall have access to the project records as defined in Section 369.820 (Audit and Records) of this Subpart and to the project site during normal business hours, to the full extent of the loan recipient's right to access.
- b) Every contract entered into by the loan recipient for construction work, and every subagreement, shall provide Agency representatives with access to the work. The contractor or subcontractor shall provide facilities for such access and inspection. The contract or subagreement shall also provide that the Agency or any authorized representative shall have access to any books, documents, papers, and

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

records that are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions.

- c) Failure by the loan recipient or any of its contractors or subcontractors to provide access, after 10 days written notice from the Agency, shall be cause for termination of the loan pursuant to Section 369.330 (Termination) of this Part, and refund to the State of Illinois for deposit into the WPCLP any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section 369.810 shall repay any loan funds previously spent.

**Section 369.820 Audit and Records**  
**EMERGENCY**

- a) The loan recipient shall maintain books, records, documents, reports, and other evidentiary material and accounting procedures and practices consistent with generally accepted government accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- b) For purposes of this Section 369.820, “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/ARRA loan project, and the loan recipient's records shall be subject to inspection and audit by the Agency or its authorized representative, at the times specified in Section 369.810 (Access) of this Subpart.
- d) The loan recipient shall preserve and make its records available to the Agency or its authorized representative for the following periods:
  - 1) For all costs associated with design and construction, for 3 years after final loan closing;

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 2) For all other accounting records concerning the loan, for 3 years from the date of the transaction; and
- 3) For any longer period required by law or by subsections (e) and (f).
- e) If the loan is completely or partially terminated, the records relating to the terminated work shall be preserved and made available for 3 years after any resulting final termination settlement.
- f) Records that relate to appeals under the "Disputes" clause in Section 369.650 (Disputes) of this Part, litigation or the settlement of claims arising out of the performance of the WPCLP loan project, or to project costs and expenses to which exception has been taken by the Agency or its authorized representatives, shall be retained until the appeals, litigation, claims, or exceptions have been completed.
- g) Failure of the loan recipient or its contractors or subcontractors to make records available to the Agency as required by Section 369.810 (Access) of this Subpart after 10 days written notice shall be cause for termination of the loan, pursuant to Section 369.330 (Termination) of this Part, and 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 369.820 shall repay any loan funds previously spent.

**Section 369.830 Single Audit Act**  
**EMERGENCY**

The loan recipient shall comply with the provisions of the Single Audit Act of 1996 (31 USC 7501 et seq.).

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

**Section 369.910 Sewer Use Ordinance**  
**EMERGENCY**

- 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

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

requirement will be enacted and enforced prior to the first loan disbursement in each jurisdiction served by the treatment works project. The ordinance shall prohibit any connections from inflow sources into the sanitary sewer portions of the sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed.

- b) The sewer use ordinance shall require:
  - 1) Pretreatment of any industrial wastes that would otherwise be detrimental to the wastewater treatment works or its proper and efficient operation and maintenance or will otherwise prevent entry of industrial wastes into the wastewater treatment works; and
  - 2) Compliance with 35 Ill. Adm. Code 310 (Pretreatment Programs).
- c) The sewer use ordinance shall prohibit the introduction of industrial waste into the sewer system until the requirements of Section 369.920 (User Charges) of this Subpart are met.

**Section 369.920 User Charges**  
**EMERGENCY**

- 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 the first year of operation of new facilities, operation, maintenance and replacement costs shall be based upon past experience for existing wastewater treatment works or some other rational method that can be demonstrated to be applicable.
  - 2) The loan recipient shall review user charges annually and revise the rates periodically to reflect actual wastewater treatment works operation, maintenance, and replacement costs. The Agency may request a report on the status of the user charge system, including projected costs, actual costs, revenue generated and fund balances at any time.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 3) The user charge system shall generate sufficient revenue to offset the cost of all wastewater treatment works operation, maintenance and replacement required to be provided by the loan recipient.
- 4) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authorizations. If the project is for a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving wastewater treatment services from the loan recipient shall have adopted user charge systems. The user charge systems shall also be incorporated in the appropriate municipal legislative enactments, intergovernmental or service agreements or other appropriate authorizations.
- c) Upon approval of a loan recipient's system of user charges, the implementation and maintenance of the approved system shall become a condition of the loan subject to Section 369.310 (Noncompliance with Loan Procedures) of this Part.
- d) The Agency or its authorized representative shall have access to all books, documents, papers, and records of the loan recipient for the purpose of making audit, examination, excerpts, and transcriptions in order to ensure compliance with subsection (b).

**Section 369.930 Financial Capability**  
**EMERGENCY**

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

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

applicant shall, at a minimum, show that:

- 1) It is empowered under law to own, operate and maintain a public wastewater treatment facility, including the facilities to be constructed under the loan;
  - 2) It has the necessary easements, titles, permits and intergovernmental agreements for loan project implementation, as identified in the facilities plan; and
  - 3) It has or will have the necessary qualified personnel to operate and maintain the facility.
- c) The financial capability demonstration shall be submitted to the Agency for approval and shall contain detailed project costs, existing and proposed operation, maintenance and replacement costs, existing and proposed local capital costs and historical information over the past 3 years consisting of audited annual financial statements, bond ratings, 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.

**Section 369.940 Dedicated Source of Revenue**

**EMERGENCY**

- 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

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

regarding coverage and reserve for the revenue source shall be equivalent to those in the revenue bond ordinance. At a minimum, the reserve account shall be equal to the annual loan repayment amount funded within 2 years after the loan award.

- b) The necessary legislative enactments to dedicate and pledge the source of revenue must be in place before the Agency can make the first loan disbursement.
- c) The loan recipient shall maintain a separate account in its books to record the dedicated revenues for loan repayment.
- d) The loan recipient shall, for the term of the loan, review and adjust the dedicated source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient shall timely notify the Agency and submit to the Agency for approval all proposed changes to the dedicated source of revenue.
- e) Upon request, the loan recipient shall submit to the Agency a statement on the status of the account required by subsection (c) that contains the status of the dedicated revenue account, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review 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 369.
- f) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the dedicated revenue source and restructure it as necessary.

**Section 369.950 Floodplain Insurance**

**EMERGENCY**

- a) If the loan project includes insurable structures that will be located within a designated floodplain area as defined in the National Flood Insurance Act of 1968 (42 USC 4001-4127), the loan recipient shall furnish written evidence that it is participating in the National Flood Insurance Program or that construction areas have received official exclusion from the flood insurance requirements by the Federal Emergency Management Agency.
- b) The loan recipient (or the construction contractor, as appropriate) shall acquire any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, and maintain the insurance for the entire useful life of the

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

insurable structures.

- c) The amount of insurance required shall be the lesser of the total project cost, excluding facilities that are uninsurable under the National Flood Insurance Program, or the maximum limit of coverage made available to the loan recipient under the National Flood Insurance Act of 1968.
- d) The required insurance premium for the period of construction shall be an allowable project cost under Section 369.1010 (Determination of Allowable Costs) of this Part.

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

**Section 369.1010 Determination of Allowable Costs**  
**EMERGENCY**

The loan recipient shall be paid, upon request, in accordance with Section 369.1030 (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 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 369;
- 3) Costs under approved construction contracts; and
- 4) Costs for premiums for required flood insurance during the project construction period.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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;
- 3) Costs outside the scope of the approved facilities plan;
- 4) Site acquisition, including easement compensation, except in those instances where the land itself shall serve as the medium for treatment (e.g., land for spray irrigation of wastewater); and
- 5) Construction of any facilities that do not comply with the definition of a "treatment works" as contained in Section 212 of the Clean Water Act.

c) Disputes Concerning Allowable Costs

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

**Section 369.1020 Use of Loan Funds and Payment of Unallowable Costs**  
**EMERGENCY**

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

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

**Section 369.1030 Disbursement of Loan Funds**  
**EMERGENCY**

- a) Disbursements are subject to the appropriation of funds by the General Assembly and the availability of cash deposited into the WPCLP from drawdowns from the USEPA Automated Clearing House, State matching funds, repayments of existing loans, interest earnings on money in the WPCLP, and money deposited into the WPCLP from other sources.
- b) Disbursements shall be made as follows:
  - 1) After the receipt of a fully executed loan agreement, disbursement requests must be sent directly to the Agency. Actual disbursements shall be processed in accordance with the loan agreement.
  - 2) Disbursements will be processed based on costs incurred that are due and payable, as evidenced by invoices. The Agency may withhold any disbursement for a violation of the loan agreement conditions.
- c) The loan recipient shall make prompt payment to the contractor.
- d) The State share of any refunds, rebates, credits, or other amounts (including any interest) accruing to or received by the loan recipient with respect to the project that are properly allocable to costs for which loan funds have been disbursed must be paid, minus any reasonable expenses incurred in securing these funds, to the State of Illinois for deposit in the WPCLP.
- e) Before the final principal amount of the loan can be established:
  - 1) The Agency shall conduct a final inspection and a project review to insure that all applicable loan conditions have been satisfied; and
  - 2) The loan recipient must submit to the Agency a final waiver from the contractor and a Certification of Payment that all bills have been paid.
- f) The loan recipient must also submit a release discharging the State of Illinois, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the loan, subject only to such exceptions specified in the release.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- g) Any use of loan funds at variance with this Part 369 shall result in repayment of those loan funds to the State of Illinois for deposit into the WPCLP.

SUBPART K: PROCEDURES FOR LOAN REPAYMENT  
AND DELINQUENT REPAYMENT

**Section 369.1110 Loan Repayment to the Agency**  
**EMERGENCY**

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

- a) Principal forgiveness of 50% will be applied to the total amount of loan disbursements from ARRA funds. The loan repayment amount shall be calculated based upon 50% of the total amount of loan disbursements from ARRA funds.
- b) Loan repayments shall commence not later than 6 months after the initiation of the loan repayment period and shall be due semi-annually unless the Agency determines that the dedicated source of revenue justifies an alternative repayment plan.
- c) After the initiation of the loan repayment period date in the loan agreement, the Agency shall set a principal amount and give the loan recipient an interim repayment schedule.
- d) After a final cost review of the project, the Agency shall establish the final principal amount and give the loan recipient a final repayment schedule.

**Section 369.1120 Delinquent Loan Repayments**  
**EMERGENCY**

- a) *In the event that a timely payment is not made by a loan recipient according to the loan schedule of repayment, the loan recipient shall notify the Agency in writing within 15 days after the payment due date. The notification shall include a statement of the reasons the payment was not timely tendered, the circumstances under which the late payments will be satisfied, and binding commitments to assure future payments. After receipt of this notification, the Agency shall confirm in writing the acceptability of the plan or take action in accordance with subsection (b) of this Section.*

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- b) *In the event that a loan recipient fails to comply with subsection (a) of this Section, the Agency shall promptly issue a notice of delinquency to the loan recipient which shall require a written response within 15 days. The notice of delinquency shall require that the loan recipient revise its rates, fees and charges to meet its obligations or take other specified actions as may be appropriate to remedy the delinquency and to assure future payments.*
- c) *In the event that the loan recipient fails to timely or adequately respond to a notice of delinquency, or fails to meet its obligations made pursuant to subsections (a) and (b) of this Section, the Agency shall pursue the collection of the amounts past due, the outstanding loan balance and the costs thereby incurred, either pursuant to the Illinois State Collection Act of 1986 [30 ILCS 210] or by any other reasonable means as may be provided by law, including the taking of title by foreclosure or otherwise to any project or other property pledged, mortgaged, encumbered, or otherwise available as security or collateral. [415 ILCS 5/19.6]*

**Section 369.APPENDIX A Executive Orders**

**Section 369.EXHIBIT A Executive Order 12549**  
**EMERGENCY**

February 18, 1986, 51 F.R. 6730

DEBARMENT AND SUSPENSION

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

Section 1.

- a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.
- c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Section 2. To the extent permitted by law, Executive departments and agencies shall:

- a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.
- b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.
- c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

Section 3. Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.

Section 4. There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

Section 5. The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.

Section 6. The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

Section 7. The Director of the Office of Management and Budget shall report to the President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make such recommendations as are appropriate further to curb fraud, waste, and abuse.

THE WHITE HOUSE  
February 18, 1986

RONALD REAGAN

**Section 369.APPENDIX A Executive Orders**

**Section 369.EXHIBIT B Executive Order 11246  
EMERGENCY**

EQUAL EMPLOYMENT OPPORTUNITY  
EXECUTIVE ORDER 11246, AS AMENDED

Executive Order 11246 – Equal Employment Opportunity

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I – Nondiscrimination in Government Employment

Part II – Nondiscrimination in Employment by Government Contractors and Subcontractors

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

Subpart A – Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

Subpart B – Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

- a) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- b) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
  
- c) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

Subpart C – Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

- a) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

- a) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

Subpart D – Sanctions and Penalties

SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

- 1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
- 2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
- 3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
- 4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
- 5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
- 6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.
- 7) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

Subpart E – Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III – Nondiscrimination Provisions in Federally Assisted Construction Contracts

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

- a) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.
- b) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information

ILLINOIS REGISTER

---

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

- a) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.
- b) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

Part IV – Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

ILLINOIS REGISTER

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

- a) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

**Section 369.APPENDIX B Loan Application**  
**EMERGENCY**

**Applicant Information**

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

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

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

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

ILLINOIS REGISTER

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

Home Rule

Non-Home Rule

3. Authorized Representative:

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

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

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

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

4. Engineer:

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

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

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

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

\_\_\_\_\_

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

5. Attorney:

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

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

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

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

\_\_\_\_\_

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

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

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

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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 Facility Planning: \_\_\_\_\_

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

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

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

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

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

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

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

1. The applicant has investigated and ascertained the location of the site or sites, rights-of-way, and easements being provided for the facilities in its application for loan assistance. In my opinion, the applicant has a sufficient legal interest in the said site or sites, rights-of-way, and

ILLINOIS REGISTER

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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 compiled 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:

Table with 3 columns: Type of Permit, Permit Number, Date Issued. Rows include Army Corps of Eng. 404, IL Dept. of Trans., County Highway, and Other.

Loan Program Certifications

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

The loan applicant hereby agrees to pay all project costs not covered by the loan. If the project costs provided by the applicant exceed \$10,000, please provide the following information:

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

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

- The loan applicant hereby certifies that is has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project.

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ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

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

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

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

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ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

**INTENT REGARDING NATIONAL FLOOD INSURANCE**

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

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

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

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

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

Whereas, application provisions for loans from the Water Pollution Control Loan Program for construction of sewage treatment works require that the \_\_\_\_\_ of \_\_\_\_\_ authorize a representative to sign the loan application forms and supporting documents; therefore, be it resolved by the \_\_\_\_\_ of \_\_\_\_\_ that \_\_\_\_\_ is hereby authorized to sign all loan application forms and documents.

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

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

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

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

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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

**Financial Information  
Requirements**

Prior to issuance of a loan agreement, the applicant must demonstrate to the Agency that it possesses the necessary legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the treatment works and to retire the loan in accordance with the schedule to be contained in the loan agreement. The applicant must provide sufficient information for the Agency to determine that the applicant is financially capable and has pledged a dedicated revenue source that is adequate to retire the debt and meet any covenants and requirements in the loan agreement. This can be accomplished by development and the enactment of a new User Charge System or the demonstration that a system previously approved by the Agency has been adequately maintained, is being enforced and will continue to produce adequate revenues.

In order to provide guidance to potential loan recipients, this brief summary of the loan rules, our review procedures, and the information that must be submitted for the Agency's review is being provided along with the attached checklist.

Financial Capability

The Agency requires that the applicant demonstrate that it has the legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the wastewater treatment works and to retire the loan. The applicant must also demonstrate the ability to meet any covenants contained in the loan agreement.

The Agency's review will be conducted using items submitted as part of the loan application including our review of the Dedicated Source of Revenue and the User Charge System. In addition, applicants must furnish the last fiscal year's audited financial statements. If we are unable to determine that the applicant is financially capable, the Agency may require additional financial data be submitted.

Dedicated Source of Revenue

The Agency requires that a specific source(s) of revenue must be dedicated and pledged to make the loan repayments. Prior to the Agency's approval of the dedicated source of revenue, the applicant must demonstrate that the revenue source will generate adequate revenues to make loan repayments for the term of the loan. The term of the loan will be specified in the loan agreement but shall not exceed 20 years from the initiation of

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

operation date contained in the loan agreement. Additional points that must be considered during the development of the dedicated source of revenue are:

- The dedicated source of revenue is usually pledged by the loan applicant in the form of an adopted ordinance that pledges a specific and dedicated source of revenue for repayment of the loan. The adopted ordinance will in most cases pledge a very stable source of revenue, such as revenues of the system, in the form of a revenue bond. General obligation and alternate bond ordinances are also acceptable.
- In the case of revenue bonds, the Agency requires that debt service coverage requirements for the IEPA loan be equal to any outstanding senior debt that is payable from revenues of the system. If a sewer service charge is used, the sewer rate and rate ordinance must be adopted prior to the first disbursement. State law requires a 1.25 x coverage test for alternate bonds, and parity revenue bonds must also meet the covenants made to outstanding investors.
- The Agency requires that the applicant furnish a legal opinion concerning the acceptability of the ordinance and other elements of the debt instrument selected for repayment of the loan. This opinion must address the validity and enforceability of the loan recipient's obligations and the absence of conflicts with other agreements, bonds or ordinances. Retention of bond counsel is optional.

User Charge System

The applicant's User Charge System must generate adequate revenues to accommodate costs for operation, maintenance and replacement of the treatment works.

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

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

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

**FINANCIAL INFORMATION CHECKLIST**

Please answer or submit information indicated, as appropriate.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

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, which pledges an alternant revenue source of \_\_\_\_\_
  - c. \_\_\_\_\_ Water      \_\_\_\_\_ Sewer or      \_\_\_\_\_ Combined System Revenues-Senior Lien
  - d. \_\_\_\_\_ Water      \_\_\_\_\_ Sewer or      \_\_\_\_\_ Combined System Revenues – Subordinate Lien
3. Authority of applicant to issue debt
  - a. \_\_\_\_\_ Home rule powers
  - b. \_\_\_\_\_ Specific authorizing statute(s) citation: Illinois Revised Section(s) \_\_\_\_\_
  - c. \_\_\_\_\_ Other (specify) \_\_\_\_\_
4. Copy of certified ordinance authorizing debt must be submitted along with existing ordinances if a subordinate lien is proposed. If this is a subordinate lien, the certified ordinance authorizing debt must have provisions for equivalent accounts and coverage.
5. Signed legal opinion with respect to the validity and enforceability of the applicant's obligations (bond ordinance) and the absence of conflicts with other agreements, bonds or ordinances.
6. A detailed demonstration that the dedicated source of revenue will provide adequate revenues to repay the loan in accordance with the terms of the loan agreement including meeting any covenants and requirements in the loan agreement.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

7. Last fiscal year's audited annual statement.
8. Are other entities substantially benefiting (greater than 5%) from the project?  
\_\_\_\_\_ Yes \_\_\_\_\_ No
9. Submit copies of any service agreement with any substantial beneficiary.  
\_\_\_\_\_ Attached \_\_\_\_\_ N/A

**EITHER**

- B. User Charge System (assuming that an Agency approved user charge system is not in existence)
  1. Submission of a detailed Operation, Maintenance and Replacement (OM & R) budget.
  2. Calculations to demonstrate how the rates and surcharges are calculated. The rates should be expressed in cost per unit of usage i.e. 1,000 gallons, 100 cubic feet, pounds of BOD and suspended solids or milligrams per liter of BOD and suspended solids as appropriate.
  3. Certified sewer use and rate ordinances.

**OR**

- C. Supplemental Review (assuming that an Agency approved User Charge system is in existence)
  1. Submit a copy of the Sewer Use Ordinance and User Charge Ordinance originally approved.
  2. Submit any amendments made to the ordinances since their approval.
  3. Is the User Charge System generating sufficient revenue to recover the Operation, Maintenance and Replacement Costs? \_\_\_\_\_ Yes \_\_\_\_\_ No. If answered NO, what corrective action is being taken?
  4. Is the Sewer Use Ordinance being enforced? \_\_\_ Yes \_\_\_ No .If answered NO, please explain.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

5. Is an annual review of the Wastewater Service Charge being performed? \_\_\_\_ Yes  
\_\_\_\_ No. If answered NO, please explain.
  
6. Will the project result in substantial changes to the costs for Operation,  
Maintenance and Replacement? \_\_\_\_ Yes \_\_\_\_ No Will the project  
substantially alter the treatment process \_\_\_\_ Yes \_\_\_\_ No.
  
7. If either question in #6 is answered yes, please submit a proposed budget for the  
first year OM&R costs and a review of the wastewater service charges along with  
appropriate revisions to the rate ordinance.

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

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

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

\_\_\_\_\_  
(Clerk)

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