

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 261  
PROCEDURES FOR PROVIDING GRANTS FROM THE ILLINOIS  
CLEAN DIESEL GRANT PROGRAM

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#### SUBPART A: INTRODUCTION

##### **Section 261.110 Purpose**

- a) The Illinois Environmental Protection Agency (Agency) is implementing the Illinois Clean Diesel Grant Program (ICDGP). The primary goal of this program is to reduce particulate matter emissions and other pollutants from diesel-powered vehicles and to improve public health. This program receives funding from a variety of sources and utilizes such funding to provide grant financial assistance to further the goals of the program and these specific sources of funding. The

funding sources include, but are not limited to, the Diesel Emissions Reduction Act (DERA), Congestion Mitigation and Air Quality Improvement Program (CMAQ), American Recovery and Reinvestment Act of 2009 (ARRA), and supplemental environmental projects (SEP). Grant financial assistance from the ICDGP is subject to the requirements of the applicable funding source and the requirements of this Part.

- b) This Part sets forth the procedures to be used by the Agency to operate the ICDGP.

## **Section 261.120 Definitions**

For the purposes of this Part, the following definitions apply:

Agency – Illinois Environmental Protection Agency.

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

CMAQ - Congestion Mitigation and Air Quality Improvement Program (23 USC 149).

DERA – Diesel Emissions Reduction Act (42 USC 16131 et seq.).

Director – Director of the Agency.

Engine repower – a new, rebuilt, or remanufactured engine configuration that has been certified or otherwise allowed by the United States Environmental Protection Agency (USEPA) and that meets or is rebuilt or remanufactured to a more stringent set of engine emission standards, as determined by USEPA.

Grant agreement – the contractual agreement between the Agency and grant recipient governing the grant, which includes at a minimum a project scope of work and grant terms and conditions.

Grant applicant – a person or entity that has applied for a grant from the Agency under this Part.

Grant period – the period of time specified in the grant agreement for performance of the project scope of work.

Grant recipient – a grant applicant that has been provided a project confirmation letter from the Agency for a grant.

Gross vehicle weight rating (GVWR) – the total vehicle weight, including the maximum load, as designated by the original equipment manufacturer.

Off-road diesel-powered vehicle or equipment – a self-propelled diesel-powered vehicle, or diesel-powered equipment, that is not an on-road diesel-powered vehicle or on-road diesel-powered equipment. This includes, but is not limited to, locomotives, marine vessels, and vehicles or equipment used in agriculture, construction, or mining.

On-road diesel-powered vehicle or equipment – a self-propelled diesel-powered vehicle, or diesel-powered equipment, designed for operation on a street or highway. This includes, but is not limited to, buses and trucks.

Project amendment confirmation letter – a written letter from the Agency to the grant recipient, including the signed grant amendment, approving revisions to a grant agreement.

Project confirmation letter – a written letter from the Agency to the grant recipient, including the signed grant agreement, authorizing the grant recipient to commence the project scope of work.

Project scope of work – the grant project activities or tasks identified by the Agency in the grant agreement for which the grant recipient may expend grant funds.

SEP – a supplemental environmental project contained in an enforceable consent decree.

Sub-agreement – a written agreement between the grant recipient and another party to perform all or part of the project scope of work for which a grant is provided, including, but not limited to, contracts and subcontracts.

Verified idle reduction technology – a technology or device that is installed on a vehicle or at a location, is designed to provide services to the vehicle or equipment that would otherwise require the operation of the main drive engine while the vehicle or equipment is parked or remains stationary, reduces unnecessary idling of such vehicle or equipment, allows for the reduction in emissions, and is verified or otherwise approved by USEPA.

Verified retrofit technology – a pollution control device verified or otherwise approved by USEPA.

### **Section 216.130 Abbreviations**

Agency	Illinois Environmental Protection Agency
ARRA	American Recovery and Reinvestment Act
CMAQ	Congestion Mitigation and Air Quality Improvement Program
DERA	Diesel Emissions Reduction Act
GVWR	gross vehicle weight rating

ICDGP	Illinois Clean Diesel Grant Program
SEP	supplemental environmental project
State	State of Illinois
USEPA	United States Environmental Protection Agency

### **Section 261.140 Severability**

If any Section, subsection, sentence or clause of this Part shall be adjudged unconstitutional, void, invalid, or otherwise unlawful, such adjudication shall not affect the validity of this Part as a whole, or any Section, subsection, sentence, or clause thereof not adjudged unconstitutional, void, invalid, or otherwise unlawful.

## **SUBPART B: REQUIREMENTS FOR THE ILLINOIS CLEAN DIESEL GRANT PROGRAM**

### **Section 261.210 Uses of the Illinois Clean Diesel Grant Program**

The ICDGP shall be used and administered by the Agency for the following purposes:

- a) To accept and retain funds from awards, appropriations, SEPs, and other funding sources; and
- b) To make grants to eligible grant applicants to finance projects that meet the purposes, goals, and requirements of the ICDGP and the applicable funding source, if any.

### **Section 261.220 Agency Responsibilities under the Illinois Clean Diesel Grant Program**

- a) The Agency shall review and evaluate grant applications on a competitive basis, issue grants in accordance with the requirements of the ICDGP and the applicable funding source, and conduct oversight of grant project work.
- b) Unless otherwise authorized by the Agency, once the grant recipient has performed the project scope of work in accordance with the requirements of this Part and the grant agreement, the Agency, subject to the provisions of this Part and the grant agreement, shall reimburse the grant recipient or contractor for the cost of the grant project work.

### **Section 261.230 Requirements for Grant Recipients under the Illinois Clean Diesel Grant Program**

- a) Grant recipients shall execute and comply with a grant agreement issued by the Agency. To the extent that grant recipients engage a contractor or subcontractor to perform all or a portion of the project scope of work, grant recipients shall enter into a sub-agreement covering those activities. The grant recipient shall provide a copy of the sub-agreement to the Agency and ensure that the contractor and any

subcontractor are aware of and comply with applicable provisions of the grant agreement and the requirements of this Part.

- b) Grant recipients shall provide for open and free competition, and shall use procurement procedures which reflect applicable local and State of Illinois (State) laws and regulations, provided the procurements conform to applicable federal law, relating to any sub-agreements for the performance of grant projects funded from the ICDGP.
- c) Grant recipients shall comply with all applicable local, State, and federal laws, regulations, policies, guidance, federal award conditions, federal circulars, and executive orders in the performance of grant projects funded from the ICDGP.

#### SUBPART C: PROCEDURES FOR ISSUANCE OF GRANTS

##### **Section 261.310 Scope and Availability of Grants**

- a) Subject to the availability of funding and the limitations, criteria, procedures, and requirements set forth in this Part, grant financial assistance from the ICDGP is available to grant applicants for projects which meet the goals and requirements of the ICDGP and the applicable funding source.
- b) Grant financial assistance shall be awarded on a competitive basis.
- c) A grant recipient, if determined to be in noncompliance with this Part or the grant agreement, may not be eligible to receive an additional grant until compliance with any existing grant agreement is achieved and the grant recipient provides sufficient assurances to the Agency that it has addressed or will timely address the previous noncompliance.

##### **Section 261.320 Limitations on Grant Amounts**

- a) Grant financial assistance is limited to:
  - 1) Sufficient appropriation by the State and the availability of cash deposited into the applicable fund from the applicable funding source; and
  - 2) Approved allowable costs as defined by this Part and identified in the grant agreement.
- b) The Agency may elect to partially fund a grant project by funding discrete portions or phases of the project scope of work.

### **Section 261.330 Grant Applicant Eligibility Criteria**

- a) Grant applicants must be located in Illinois, unless otherwise agreed to by the Agency;
- b) Grant applicants must own the vehicle(s) or equipment involved in the proposed grant project, unless otherwise agreed to by the Agency;
- c) A unit, department, agency, or instrumentality of the federal government is not an eligible grant applicant under this Part, unless otherwise agreed to by the Agency;
- d) Grant applicants' proposed projects must meet the goals of the ICDGP;
- e) Grant applicants shall follow the procedures and requirements contained in this Part; and
- f) Grant applicants must meet all eligibility criteria and requirements of the applicable funding source.

### **Section 261.340 Vehicle and Equipment Eligibility Criteria**

- a) As approved by the Agency, eligible vehicles and equipment may include the following:
  - 1) On-road diesel-powered vehicles or equipment; and
  - 2) Off-road diesel-powered vehicles or equipment.
- b) The vehicle(s) or equipment must be in continuous service and not utilized as a reserve vehicle or equipment in which its primary function is to substitute for another vehicle or equipment on a short-term basis.
- c) The vehicle(s) or equipment must meet all eligibility criteria and requirements relating to the applicable funding source.

### **Section 261.350 Technology Eligibility Criteria**

- a) The following technologies are eligible for grant financial assistance under this Part:
  - 1) Verified retrofit technology, including, but not limited to, retrofit devices and engine upgrades, that when applied to an existing diesel engine achieves emission reductions beyond what was required or allowed by USEPA at the time of the engine's manufacture and certification;

- 2) Verified idle reduction technology, including, but not limited to, a technology or device that:
  - A) Is installed on a vehicle or at a location, that reduces idling of such vehicle or equipment, and/or is designed to provide services such as heat, air conditioning, and/or electricity to the vehicle or equipment that would otherwise require the operation of the main drive engine while it is parked;
  - B) Reduces fuel usage and emissions from the vehicle or equipment when compared to idling the main engine; and
  - C) Is approved by USEPA and/or the California Air Resources Board;
- 3) Engine repower, including, but not limited to, diesel engine replacement with an engine certified for use or the replacement of an off-road engine with an on-road engine, as approved by USEPA. To be eligible, repower projects must meet the following criteria:
  - A) The repowered vehicle or equipment must continue to perform the same function as before the repower;
  - B) The engine being replaced must be scrapped in accordance with the grant agreement, if specified, or rendered permanently disabled, or returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. If scrapped or salvaged engines are to be sold, program income requirements apply as specified by the grant agreement; and
  - C) Evidence of appropriate disposal, including vehicle identification number, engine serial number, or equivalent as determined by the Agency, must be provided;
- 4) Vehicle or equipment replacement. On-road and off-road diesel-powered vehicles and equipment may be replaced with newer, cleaner vehicles and equipment that operate on diesel or alternative fuels and meet a more stringent set of engine emissions standards as specified by USEPA. To be eligible, vehicle and equipment replacement projects must meet the following criteria:
  - A) Unless otherwise approved by the Agency, the replacement vehicle or equipment must be of the same type and similar GVWR or horsepower as the vehicle or equipment being replaced;
  - B) The replacement vehicle or equipment must perform the same function as the vehicle or equipment that is being replaced;

- C) The vehicle or equipment being replaced must be scrapped in accordance with the grant agreement, if specified, or rendered permanently disabled or returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Equipment and vehicle components that are not part of the engine or chassis may be salvaged from the unit being replaced. If scrapped or salvaged vehicles or parts are to be sold, program income requirements apply as specified by the grant agreement; and
  - D) Evidence of appropriate disposal, including vehicle identification number, engine serial number, or equivalent as determined by the Agency, must be provided;
- 5) Technologies and equipment may be deemed eligible by the Agency for certain types of grant financial assistance, consistent with USEPA approval, in the event that such technology is not yet certified or verified by USEPA; and
  - 6) Other types of technologies or combinations of technologies which are verified or certified by USEPA, or otherwise allowed by USEPA.
- b) The following are not eligible for repower or replacement projects:
    - 1) Engine repower or replacement projects that would have occurred through normal attrition are considered to be the result of normal fleet turnover. Normal attrition generally means a replacement or repower that is scheduled to take place during the grant period. Normal attrition is generally defined by the vehicle or fleet owner's budget plan, operating plan, standard procedures, or retirement schedule; or
    - 2) The purchase of new vehicles or equipment to expand a fleet.
  - c) No funds awarded under this Part shall be used to fund the purchase or installation of emission control equipment or technology that is required as a result of noncompliance with a local, State, or federal law.

### **Section 261.360 Grant Applications**

- a) To be considered for a grant, grant applicants must submit to the Agency a complete application form and other required information. The grant application form must be signed and dated by a representative authorized to sign for the grant applicant that is ultimately responsible for implementation of the project scope of work. The title of the representative must be provided.

- b) Grant applicants must use grant application forms furnished by the Agency. Grant applicants shall obtain grant application forms, including other required information, and instructions from the Agency. Completed applications, including other required information, must be submitted to the Agency.

### **Section 261.370 Agency Action on Grant Applications**

- a) Issuance of grants under this Part is subject to appropriation by the State and availability of funds from the applicable funding source.
- b) Completed grant applications shall remain active for funding for one year from Agency receipt of the application.
- c) If a grant applicant submits an incomplete application, the Agency shall attempt to so notify the grant applicant in writing, identifying the information that is lacking.
- d) The Agency may request that the grant applicant revise its grant application.
- e) Grant applicants are not eligible to obtain grant financial assistance by default due to failure by the Agency to act upon a grant application.
- f) The Agency shall evaluate grant applications meeting the requirements of the applicable funding sources and this Part based on air quality benefit, geographic distribution, and project type.
- g) The Agency shall select grant applications that best match the purposes of the ICDGP and applicable funding sources.

### **Section 261.380 Grant Agreement**

- a) If selected for a grant project, the Agency shall send the grant applicant a grant agreement. The grant applicant shall sign and return the grant agreement within the time period specified by the Agency. If the grant applicant fails to submit the signed grant agreement to the Agency, the grant award may be considered null and void.
- b) The grant agreement and any grant amendments and approved minor project scope of work changes shall govern the grant.
- c) Following acceptance of the grant agreement by the State, the Agency shall issue a project confirmation letter, including a signed copy of the grant agreement, to the grant recipient, which authorizes the grant recipient to begin the project scope of work.

## **Section 261.390 Amendments to Grant Agreement and Minor Project Scope of Work Changes**

From time to time, the Agency and grant recipient may propose changes to the grant agreement and mutually agree to changes to the grant agreement.

- a) Amendments to the Grant Agreement. A grant amendment is a significant change to the grant agreement that generally may include, but may not be limited to, changes to the total project cost, number of vehicles affected, grant period, or project air quality benefit. The grant agreement may be amended only by the mutual consent of the parties set forth in writing as a grant amendment, signed and dated by the Agency and the grant recipient. The following requirements and procedures apply to grant amendments:
  - 1) The grant recipient may request a grant amendment at any point during the grant period. Requests for grant amendments must be submitted in writing to the Agency by the grant recipient's representative as defined in Section 261.360(a) (Grant Applications) of this Subpart.
  - 2) The Agency shall notify the grant recipient in writing of its approval or rejection of the requested grant amendment no more than 90 calendar days after receipt of a request for a grant amendment.
  - 3) Permissible grant amendments may include, but are not limited to, the following:
    - A) The original project cost approval was based on estimated costs or contractor bids and the actual costs or contractor bids are greater or less than the estimated costs;
    - B) Amendments to State or federal statutes or regulations have affected or will affect the project costs;
    - C) A project scope of work element was inadvertently omitted; or
    - D) A project scope of work element was added pursuant to applicable local, State, or federal law.
  - 4) A grant amendment becomes effective when signed by both the Agency and the grant recipient, and approved by the State. Following acceptance, the Agency shall issue a project amendment confirmation letter, including a signed copy of the grant amendment, to the grant recipient.
  - 5) A grant recipient is not eligible to obtain a grant amendment by default due to the Agency's failure to act within the time frame set forth in this Section.

- b) Minor Project Scope of Work Changes. A minor project scope of work change includes, but is not limited to, a change in location that does not affect air quality benefit, a change in equipment specification such as engine displacement capacity or equipment manufacturer, or other similar change, which is not a grant amendment. The following requirements and procedures apply to minor project scope of work changes:
- 1) Grant recipients shall notify the Agency, in writing, of all proposed minor project scope of work changes.
  - 2) The Agency may approve proposed minor project scope of work changes that it determines are cost-effective and within the overall scope, criteria, requirements, and limitations of the grant project.
  - 3) The Agency shall notify the grant recipient in writing of its approval or rejection of the request.
  - 4) A grant recipient cannot obtain approval of a project scope of work change by default due to the Agency's failure to respond to such a request.

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

##### **Section 261.410 Project Initiation**

The grant recipient shall not commence the project scope of work until receipt of the Agency's project confirmation letter. In the event the grant recipient commences any part of the project scope of work prior to receipt of the Agency's project confirmation letter, the Agency may reject a request for payment for any and all costs incurred.

##### **Section 261.420 Operation and Maintenance of the Project**

- a) Grant recipients shall provide project oversight and monitoring to assure compliance with the project scope of work.
- b) Grant recipients must operate and maintain the vehicle, equipment, and/or technology according to manufacturer specifications.

##### **Section 261.430 Delays and Developments**

- a) The grant recipient shall notify the Agency in writing of any problems, delays, or adverse conditions which may materially impair its ability to complete the project scope of work. This notice shall include a statement of the action taken, or contemplated to be taken, to resolve the situation. This in no way implies that any such action or delay is accepted by the Agency or relieves the grant recipient of its obligations under the grant agreement or this Part.

- b) The grant recipient shall notify the Agency of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.
- c) This Section cannot be used to request or obtain approval of proposed minor project scope of work changes or proposed grant amendments.

#### **Section 261.440 State and Federal Oversight**

- a) The Agency and other entities as referenced in Subpart G of this Part shall have oversight of all grant projects performed under the ICDGP. Oversight includes, but is not limited to, access to the project work, personnel, and records in accordance with Subpart G of this Part.
- b) The Agency may request changes to the grant recipient's performance of the project scope of work as a result of its oversight of the grant project. The grant recipient must modify its performance, as requested by the Agency, within the time frame specified by the Agency.
- c) The Agency may partner with other entities to perform oversight of grant projects.

#### **Section 261.450 Evaluation of Performance**

The Agency shall oversee grant recipient performance in the following manner:

- a) The Agency shall evaluate the grant recipient's performance and progress towards completion of the grant project.
- b) If the Agency's evaluation reveals that the grant recipient is not in compliance with one or more provisions of the grant agreement or this Part, the Agency shall attempt to resolve the situation through negotiation. The Agency and the grant recipient shall put any settlement reached in writing as a grant amendment or minor project scope of work change, in accordance with Section 261.390 (Amendments to Grant Agreement and Minor Project Scope of Work Changes) of this Part.
- c) If resolution is not achieved, the Agency may impose any of the remedies set forth in Subpart F of this Part.

#### **Section 261.460 Final Inspection**

The grant recipient shall notify the Agency in writing within 30 calendar days after completion of the project scope of work. The Agency shall conduct the final inspection within 60 calendar days after receipt of the notice of completion. If the Agency concludes at final inspection that performance of the project scope of work is deficient, the Agency shall notify the grant recipient in writing within 30 calendar days after final inspection. Within 30 calendar days after receipt of

the Agency's written notice of deficiency, the grant recipient shall satisfy such deficiency and notify the Agency in writing of completion. The Agency shall schedule a follow-up inspection, or other appropriate review, within 30 calendar days after receipt of such notice.

### **Section 261.470 Equipment Disposition and Recoupment**

- a) Grants under this Part are subject to applicable property disposition requirements contained in 40 CFR 30.34, 40 CFR 31.32, or 49 CFR 18.32, and the grant agreement.
- b) Subject to subsection (a), if at any time the vehicle or equipment outlined in the project scope of work is not being used for its intended purpose by the grant recipient, the grant recipient may be required to reimburse the Agency for such vehicle, equipment, and/or technology cost plus installation in accordance with a straight-line month-to-month amortization over a five year period.

## **SUBPART E: REQUIREMENTS APPLICABLE TO GRANT DISBURSEMENTS**

### **Section 261.510 Determination of Allowable Costs**

- a) Allowable Costs. Allowable costs are reasonable and necessary costs directly attributable to the project scope of work. Allowable costs shall be identified in the grant agreement. Categories of reasonable and necessary costs include:
  - 1) The direct purchase of eligible vehicles, equipment, or technology as specified in Sections 261.340 (Vehicle and Equipment Eligibility Criteria) or 261.350 (Technology Eligibility Criteria) of this Part, the materials necessary for installation of the eligible equipment or technology, and installation of the eligible equipment or technology;
  - 2) Costs incurred only during the grant period; and
  - 3) Other costs as determined by the Agency.
- b) Disputes Concerning Allowable Costs. Grant recipients 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 261.520 Use of Grant Funds and Unallowable Costs**

- a) Grant funds shall be expended solely for approved allowable costs incurred in the performance of the project scope of work.
- b) Grant recipients shall pay the unallowable costs associated with the grant project, as well as all allowable costs that exceed the amount of the grant, and shall

perform the project or cause it to be performed to completion in accordance with the project scope of work within the grant period.

### **Section 261.530 Disbursement of Grant Funds**

- a) Unless otherwise authorized, the Agency shall use reimbursement disbursements as the method of payment of grant funds.
- b) Disbursements are subject to appropriation by the State and the availability of cash deposited into the applicable fund from the applicable funding source.
- c) Disbursements shall be made as follows:
  - 1) Within 30 days after completion of final inspection as required by Section 261.460 of this Part, the grant recipient shall submit invoices or a final invoice to the Agency showing purchases made and services performed; and
  - 2) Unless otherwise authorized by the Agency, disbursements will be limited to either the maximum amount specified in the grant agreement or the actual allowable costs incurred, whichever is less, as evidenced by invoices or a final invoice. The Agency may withhold any disbursement for a violation of the grant agreement or this Part.
- d) Unless otherwise authorized by the Agency, grant recipients shall make prompt payment to their contractor or subcontractor prior to requesting disbursement from the Agency.
- e) The grant recipient shall reimburse the State within 45 days the State's share of any refunds, rebates, credits, or other amounts (including any interest) accruing to or received by the grant recipient with respect to the grant project that are properly allocable to costs for which grant funds have been disbursed, minus any reasonable expenses incurred in securing these funds.
- f) Unless otherwise authorized by the Agency, before payment under the grant agreement can be made:
  - 1) The Agency shall conduct a final inspection in accordance with Section 261.460 of this Part to insure that all applicable grant requirements and conditions have been satisfied; and
  - 2) Grant recipients must submit to the Agency all invoices or a final invoice, referencing the name of the organization for which the project scope of work was performed, and a cover letter indicating that the project scope of work is completed, a description of the payment made, proof of full payment, and the grant disbursement amount requested.

## **Section 261.540 Agency Reimbursement**

The Agency shall be reimbursed for any grant funds disbursed which have not been spent in accordance with the Illinois Grant Funds Recovery Act [30 ILCS 705], this Part, or the grant agreement. The grant applicant must reimburse the Agency for any misspent funds.

### **SUBPART F: LIABILITIES AND REMEDIES FOR FAILURE TO COMPLY WITH GRANT PROCEDURES**

## **Section 261.610 Noncompliance with Grant Requirements and Procedures**

- a) In the event of noncompliance with any provision of the grant agreement or this Part, the Director may take any necessary action as provided by law or by the grant agreement against the grant 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 grant funds revoked immediately and recover all grant funds;
  - 3) Terminate the grant pursuant to Section 261.630 (Grant Termination by the Agency) of this Subpart;
  - 4) Suspend all or part of the project scope of work pursuant to Section 261.620 (Project Suspension) of this Subpart; or
  - 5) Reduce the amount of the grant by the amount of misused funds.
- b) 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 grant recipient can remedy or has remedied the violation, and whether the grant recipient and any contractor or subcontractor remain capable of complying with the approved project scope of work.

## **Section 261.620 Project Suspension**

- a) In the event of any violation of this Part or noncompliance with any provision of the grant agreement, the Agency may, by written notice and order, require the grant recipient to suspend all or any part of the project scope of work for a period of not more than 30 calendar 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 project suspension order, the grant 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 suspension. Within 30 days after the date of the project suspension order, or

within the period of any extension to which the parties have agreed, the Agency may:

- 1) Cancel the project suspension order upon resolution of the violation or cause leading to that project suspension order; or
  - 2) Terminate the work covered by the project suspension order, as provided in Section 261.630 (Grant Termination by the Agency) of this Subpart.
- b) If a project suspension order is cancelled or the period of the order or any extension thereof expires, the grant recipient shall resume work. An adjustment may be made in the grant period, the grant amount, or any combination of these, and the grant amended accordingly, if the grant recipient submits a written claim for such an adjustment to the Agency within 30 calendar days after the end of the project suspension. Any such adjustment is at the discretion of the Agency.
- c) All costs that are incurred by the grant recipient after the receipt of a project suspension order, or during any extension of the project suspension order period to which the Agency and the grant recipient have agreed, shall be deemed unallowable costs unless otherwise authorized by the Agency in writing.

#### **Section 261.630 Grant Termination by the Agency**

The Agency, by written notice to the grant recipient, may terminate the grant in whole or in part. Cause for termination shall include, but is not limited to, an Agency determination that the grant recipient has failed to make sufficient progress in performing the project scope of work, or failure by the grant recipient to comply with any provision of the grant agreement or this Part. Upon grant termination, the grant recipient shall refund any unexpended grant funds to the State, except for such portion as may be required to pay the allowable costs under an enforceable sub-agreement prior to the effective date of the termination. Within 30 days after grant termination, the grant recipient must provide to the Agency written proof of allowable costs incurred prior to the effective date of the termination.

#### **Section 261.640 Recovery of Grant Funds**

If the Agency determines that any grant funds are being misspent or improperly held by the grant recipient, the Agency or the Attorney General shall have the authority to recover those funds and take any action authorized by the Illinois Grant Funds Recovery Act [30 ILCS 705].

#### **Section 261.650 Indemnification**

The grant recipient agrees to defend, indemnify, and hold harmless the State, its agencies, officers, employees, agents, and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements, and judgments, including in-house and contracted attorneys' fees and expenses, caused by, arising out of, or occurring in connection with

- a) the grant or execution of any work or sub-agreement arising out of the grant,
- b) any actual or alleged death or injury to any person, damage to any property, or any other damage or loss by whomsoever suffered, claimed to result in whole or in part from the grant or execution of any work or sub-agreement arising out of the grant, or
- c) any act, activity, or omission of the grant recipient or any of its employees, representatives, contractors, subcontractors, or agents.

The grant recipient shall require any contractor or subcontractor engaged by the grant recipient to agree in writing to look solely to the grant recipient for performance of its sub-agreement with the grant recipient and for satisfaction of any and all claims arising thereunder.

### **Section 261.660 Disputes Relating to Performance**

- a) Disputes relating to performance of the project scope of work that are not disposed of by agreement shall be decided by the Director, or his or her authorized representative, who shall render a decision in writing. This decision shall be furnished to the grant recipient by mail, electronic mail, facsimile, personal service, or by similar means. The decision of the Director shall be in accordance with this Part and shall be final and conclusive.
- b) Subsection (a) shall not preclude the Director from considering questions of law or equity in any decision.

### **SUBPART G: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING, AND RECORDS**

### **Section 261.710 Access**

- a) Any entity with grant oversight authority, and any representative of such entity, shall have access, during normal business hours and at any other time during which project work is being performed, to the premises where any project work is being performed. After completion of the grant project, any entity with grant oversight authority, and any representative of such entity, shall have access to the resulting grant project work for five years, during normal business hours. During any such access under this subsection, interviews of persons may be conducted.
- b) Failure by the grant recipient or any of its contractors or subcontractors, as applicable, to provide access as required by this Section after 3 business days written notice from the Agency, may be cause for termination of the grant, pursuant to Section 261.630 (Grant Termination by the Agency) of this Part, and refund to the State of any unexpended grant funds. In addition, any grant recipient, contractor, or subcontractor, as applicable, found in noncompliance

with this Section shall repay any grant funds in accordance with Section 261.640 of this Part.

### **Section 261.720 Audit and Records**

- a) The grant recipient, its contractors and subcontractors as applicable, shall maintain books, records, documents, reports, papers, agreements, sub-agreements, and other evidentiary material and accounting procedures and practices (hereinafter collectively referred to as "records") as required by the grant agreement and any applicable law or regulation, and consistent with generally accepted accounting standards.
- b) For purposes of this Section, "records" shall include, but not be limited to, the following:
  - 1) Documentation of the receipt and disposition by the grant recipient of all grant funds received for the project, including both grant financial assistance and any matching share or cost share; and
  - 2) Documentation of the costs charged to the grant project, including all direct and indirect costs of whatever nature incurred for the performance of the project scope of work for which the grant has been provided.
- c) The grant recipient's facilities, or any facilities engaged in the performance of the grant project, and the grant recipient's records, including any contractor or subcontractor's records as applicable, shall be subject to inspection and audit by any entity with grant oversight authority, and any representative of such entity, at the times specified in Section 261.710 (Access) of this Subpart.
- d) The grant recipient, its contractors and subcontractors as applicable, shall preserve and make its records available to any entity with grant oversight authority, and any representative of such entity, for the following record retention periods:
  - 1) Five years from the date of final payment under the grant or submission of final expenditure under the grant, whichever is later; or
  - 2) Any longer period required by law or by subsections (e) or (f) of this Section.
- e) If the grant is completely or partially terminated, the records relating to the terminated work shall be preserved and made available for the applicable record retention period as specified by subsection (d) after any resulting final termination settlement.
- f) If any dispute, litigation, claim, negotiation, audit, or other action involving the records has been started before expiration of the applicable record retention

period specified in subsection (d), the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the applicable record retention period, whichever is later.

- g) Failure of the grant recipient or its contractors or subcontractors, as applicable, to make records available as required by this Section after 3 business days written notice from the Agency may be cause for termination of the grant, pursuant to Section 261.630 (Grant Termination by the Agency) of this Part, and refund to the State of any unexpended grant funds. In addition, any grant recipient, contractor, or subcontractor, as applicable, found in non-compliance with this Section shall repay any grant funds in accordance with Section 261.640 of this Part.
- h) The rights of access under this Section are not limited to the applicable record retention period, but shall last as long as the records are retained.
- i) The grant recipient, its contractors and subcontractors as applicable, shall comply with any investigations and interviews relating to the grant project and records relating thereto.

#### **Section 261.730 Single Audit Act**

Grant recipients, their contractors and subcontractors as applicable, shall comply with the provisions of the Single Audit Act (31 USC 7501 et seq.), as applicable, and inspections and investigations pertaining thereto.

#### **Section 261.740 Reporting**

- a) Grant recipients must provide any and all reports specified by the Agency in the grant agreement and must provide such reports in the time frame specified by the Agency. Grant recipients must comply with any and all other applicable State or federal reporting requirements.
- b) Grant recipients must cooperate with the Agency in fulfillment of the Agency's reporting requirements which relate to the grant, including any State or federal reporting requirements which may apply. Grant recipients must provide the information requested by the Agency in the time frame specified by the Agency.
- c) Noncompliance with this Section shall be grounds for termination of the grant in accordance with Section 261.630 (Grant Termination by the Agency) of this Part.