

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 102
REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

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AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 197-; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1984; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20471, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498, effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005; amended in R10-18 at 34 Ill. Reg. 34, effective August 9, 2010; amended in R14-21 at 39 Ill. Reg. 2333, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7955, effective May 20, 2016.

SUBPART A: GENERAL PROVISIONS

Section 102.100 Applicability

- a) This Part applies to all regulatory and informational hearings and proceedings, and must be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted pursuant to this Part are quasi-legislative in nature and the purpose of the hearings is to gather information and comments to guide the Board in its rulemaking process. All testimony must be sworn.
- b) All persons taking part in these hearings are participants, rather than parties as in contested cases. Non-attorneys may represent themselves and others at regulatory hearings and may ask questions of witnesses or give testimony or comment as allowed by the hearing officer.

Section 102.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 102.104 Definitions

For the purpose of this Part, words and terms will have the meanings as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

Section 102.106 Types of Regulatory Proposals

- a) The Act provides for 5 types of regulatory proposals:
 - 1) Identical-in-substance rulemakings, as defined in Sections 7.2, 13.3, 28.2 and 28.4 of the Act [415 ILCS 5/7.2, 13.3, 28.2, and 28.4];
 - 2) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2];
 - 3) Other regulatory proposals, both of general applicability and not of general applicability as allowed by Sections 26, 27 and 28 of the Act [415 ILCS 5/26, 27, and 28];
 - 4) Clean Air Act fast track rulemakings as defined by Section 28.5 of the Act [415 ILCS 5/28.5]; and
 - 5) Rulemakings to update incorporations by reference, as allowed by Section 28.6 of the Act [415 ILCS 5/28.6].

- b) The IAPA provides for three types of rulemakings:
 - 1) General rulemaking pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40];
 - 2) Emergency rulemaking pursuant to Section 5-45 of the IAPA [5 ILCS 100/5-45]; and
 - 3) Peremptory rulemaking pursuant to Section 5-50 of the IAPA [5 ILCS 100/5-50].

(Source: Amended at 29 Ill. Reg. 8776, effective June 8, 2005)

Section 102.108 Public Comments

- a) The Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section 102.604 of this Part.

However, when adopting identical-in-substance regulations, the Board will accept written comments from USEPA and other persons for at least 45 days after the date of publication of the proposed regulations or amendments in the Illinois Register in accordance with Section 102.610 of this Part.

- b) Any person may submit written comments on any proposal within 14 days after the receipt of the hearing transcript in Board offices unless otherwise specified by the hearing officer or the Board.
- c) Comments must be filed with the Clerk and served in accordance with 35 Ill. Adm. Code 101.Subpart C, upon the Environmental Protection Agency (Agency), Department of Natural Resources (DNR), the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer pursuant to Section 102.422 of this Part unless otherwise specified by the hearing officer or the Board.
- d) Comments that are not timely filed or properly served will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

Section 102.110 Waiver of Requirements

The Board may waive any of the non-statutory requirements of this Part upon a showing by a person that a particular requirement would create an undue burden on that person such as where the burden of compliance imposes financial costs that would preclude further participation, or where compliance would result in the provision of information already provided in that proceeding.

Section 102.112 Other Proceedings

Pursuant to Section 5(d) of the Act or other applicable law, the Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act or other applicable law. The hearings may include inquiry hearings to gather information on any subject the Board is authorized to regulate.

Section 102.114 Hearings

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. 7955, effective May 20, 2016)

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS, AND SITE-SPECIFIC REGULATIONS

Section 102.200 Proposal for Regulations of General Applicability

Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a regulation. The proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served upon the Attorney General, the Agency, and DNR in accordance with 35 Ill. Adm. Code 101.304(c).

(Source: Amended at 39 Ill. Reg. 2333, effective January 27, 2015)

Section 102.202 Proposal Contents for Regulations of General Applicability

Each proponent must set forth the following in its proposal:

- a) The language of the proposed rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal, including environmental, technical, and economic justification. The statement must discuss the applicable factors listed in Section 27(a) of the Act. The statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule;
- c) A synopsis of all testimony to be presented by the proponent at hearing;
- d) Any material to be incorporated by reference within the proposed rule pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75];
- e) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*
- f) Documentation of service upon all persons required to be served pursuant to Section 102.422 of this Part;
- g) Unless the proponent is the Agency or DNR, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.410(b) of this Part;

- h) When the Agency proposes a rule it believes is federally required, a certification in accordance with Section 102.500 of this Part;
- i) For a proposed rule that amends an existing Board rule, a written statement or certification that the proposal amends the most recent version of the rule as published on the Board's Web site or as obtained from the Clerk;
- j) When the proponent is a State agency, an electronic version of the information required under subsection (a) of this Section in Microsoft Word for Windows, version 6.0 or greater; and
- k) When any information required under this Section is inapplicable or unavailable, a complete justification for the inapplicability or unavailability.

(Source: Amended at 39 Ill. Reg. 2333, effective January 27, 2015)

Section 102.204 Proposal of RCRA Amendments

In addition to satisfying the requirements of Section 102.202 of this Part, any proposal to amend the RCRA regulations must:

- a) Indicate whether it is made pursuant to the provisions of Section 22.4(a), 22.4(b) or 22.4(c) of the Act;
- b) Include a listing of all amendments to the corresponding federal regulations since the period encompassed by the last amendment of the Board's RCRA rules; and
- c) Include a certificate of service indicating that a copy of the proposal has been served on the USEPA. Service must be made at the following address:

Director, Waste Management Division
USEPA, Region V
77 W. Jackson Street
Chicago, Illinois 60604

Section 102.206 Notice of Site-Specific RCRA Proposals

- a) Public notice of hearings on site-specific RCRA proposals will be given at least 30 days before the date of the hearing.
- b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:
 - 1) Federal agencies as designated by the USEPA;

- 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.416 of this Part, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2) and (d)(4) through (d)(8) of this Section.
- d) A hearing notice on a site-specific RCRA proposal will include the following information:
- 1) The address of the Board office;
 - 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
 - 3) A brief description of the business conducted at the facility and the activity described in the proposal;
 - 4) A description of the relief requested in the proposal;
 - 5) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the proposal;
 - 6) The name, address, e-mail address, and telephone number of the Agency's representative in the rulemaking;
 - 7) A description of any written comment period or a statement that a comment period will be established in the future;
 - 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions that are claimed or determined to be trade secrets, and that procedures are available whereby

disclosure may be sought by the public. Any such claim must be made in accordance with 35 Ill. Adm. Code 130;

- 9) A statement that site-specific rules may be adopted pursuant to 415 ILCS 5/27 and Section 102.202 of this Part, and a citation to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

(Source: Amended at 39 Ill. Reg. 2333, effective January 27, 2015)

Section 102.208 Proposal for Site-Specific Regulations

Any person may submit a written proposal for the adoption, amendment or repeal of a substantive site-specific regulation. The proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served upon the Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).

(Source: Amended at 39 Ill. Reg. 2333, effective January 27, 2015)

Section 102.210 Proposal Contents for Site-Specific Regulations

Proponents of site-specific regulations other than those relating to RCRA must comply with the requirements of Section 102.202 of this Part in addition to the following requirements:

- a) The proposal must set forth the language of the proposed site-specific rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring and language being deleted must be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own Section;
- b) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal must specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. The documentation must include relevant information on other similar persons' or sites' ability to comply with the general rule. Where relevant to the Board's consideration, the proposal must also include information pertaining to *existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, and the nature of the existing air quality or receiving body of water* [415 ILCS 5/27(a)];
- c) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study,*

and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5ILCS 140]. [5 ILCS 100/5-40(3.5)];

- d) The proposal must describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal must also include a detailed assessment of the environmental impact of the proposed change, and include a description of available treatment or control options;
- e) The proposal must demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g., Underground Injection Control program, Resource Conservation and Recovery Act, etc.);
- f) When the proponent is a State agency, the proponent also must provide an electronic version of the information required under subsection (a) of this Section in Microsoft Word for Windows, version 6.0 or greater; and
- g) When any information required under this Section is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.

(Source: Amended at 39 Ill. Reg. 2333, effective January 27, 2015)

Section 102.211 Proposal to Update Incorporations by Reference

- a) *Any person may file a proposal with the Board to update an incorporation by reference included in a Board rule. The Board or the Agency may also make such a proposal on its own initiative. [415 ILCS 5/28.6(a)] The proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served on the Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).*
- b) *A rulemaking to update an incorporation by reference under this Section must:*
 - 1) *Be for the sole purpose of replacing a reference to an older or obsolete version of a document with a reference to the current version of that document or its successor document; and*
 - 2) *Comply with Sections 5-40 and 5-75 of the IAPA [5 ILCS 100/5-40, 5-75]. [415 ILCS 5/28.6(b), (c)]*

- c) *Sections 27 and 28 of the Act [415 ILCS 5/27, 28] do not apply to rulemaking under this Section. [415 ILCS 5/28.6(c)] Accordingly, for rulemaking under this Section, the Board will not hold any public hearings nor request that the Department of Commerce and Economic Opportunity conduct a study of the economic impact of the proposed amendment.*
- d) A proposal to update an incorporation by reference under this Section must:
 - 1) Include a statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal;
 - 2) Comply with subsections (a), (d), (e), (f), (i), and (j) of Section 102.202 of this Part; and
 - 3) When any information required under this subsection (d) is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.
- e) *If an objection to the proposed amendment is filed during the public comment period required under Section 5-40 of the IAPA [5 ILCS 100/5-40], then the proposed amendment cannot be adopted pursuant to this Section. [415 ILCS 5/28.6(d)]*
- f) *Nothing in this Section precludes the adoption of a change to an incorporation by reference through other lawful rulemaking procedures. [415 ILCS 5/28.6(d)]*

(Source: Added at 29 Ill. Reg. 8776, effective June 8, 2005)

Section 102.212 Dismissal

- a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board will consider factors including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
- c) A proposal will be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the statutory authority on which the proposal is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal will be made. Dismissal of a proposal will not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by applicable law or Board regulations.
- d) Any person may file a motion challenging the statutory authority or sufficiency of the proposal pursuant to 35 Ill. Adm. Code 101.Subpart E.

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA) FAST TRACK RULEMAKING

Section 102.300 Applicability

This Subpart applies to *the adoption of rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA). A “fast-track” rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this Section, “requires to be adopted” refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules.* [415 ILCS 5/28.5(a), (c)]

Section 102.302 Agency Proposal

- a) When proposing a regulation required by the CAAA, the Agency must meet the following requirements:
 - 1) The proposal must set forth the proposed rule, which must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
 - 2) The proposal must have a cover sheet that prominently states that the Agency proposes the rule under Section 28.5 of the Act, *unless another*

provision of the Act specifies the method for adopting a specific rule [415 ILCS 5/28.5(c)];

- 3) The proposal must *clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based* [415 ILCS 5/28.5(e)(3)];
 - 4) The proposal must include *supporting documentation for the rule that summarizes the basis of the rule* [415 ILCS 5/28.5(e)(4)];
 - 5) The proposal must *describe in general the alternative selected and the basis for the alternative* [415 ILCS 5/28.5(e)(5)];
 - 6) The proposal must summarize the economic and technical data that the Agency relied upon in drafting the proposed rule;
 - 7) The proposal must include a list of any documents that the Agency directly relied upon in drafting the proposed rule or that the Agency intends to rely upon at hearing, and copies of the documents;
 - 8) The proposal must set forth *a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, and identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency* [415 ILCS 5/28.5(e)(8)];
 - 9) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act* [5 ILCS 140]. [5 ILCS 100/5-40(3.5)]; and
 - 10) The proposal must include an electronic version of the information required under subsection (a)(1) of this Section in Microsoft Word for Windows, version 6.0 or greater.
- b) If the proposal fails to meet any of the requirements of subsection (a) of this Section, the Board may decide not to accept the proposal for filing.

(Source: Amended at 39 Ill. Reg. 2333, effective January 27, 2015)

Section 102.304 Hearings

- a) Within 14 days after the receipt of a rule, the Board will file the proposed rule for first notice and schedule all hearings. Additionally, the Board will send notice of the scheduled hearing to the appropriate publication. The hearing notice will be published at least 30 days before the date of the hearing. When the Board can cause timely publication of the hearing notice in the Illinois Register, the Board will do so in lieu of newspaper notice.
- b) The first hearing will be held within 55 days after receipt of the rule and is reserved for the Agency's testimony and questions of the Agency's witnesses.
- c) Within 7 days after the first hearing, any person may request a second hearing. The request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.
- d) A second hearing will be held to hear comments on Department of Commerce and Economic Opportunity's economic impact study of the proposed rules. *At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Economic Opportunity's explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as part of any Board hearing considering such new rules [415 ILCS 5/27(b)].* See also Section 102.414. The second hearing must also permit the *presentation of testimony, documents, and comments by affected entities and all other interested persons.* [415 ILCS 5/28.5(g)]
- e) *The third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to any Agency response to the material submitted at the second hearing and to any response by other parties [415 ILCS 5/28.5(g)].* In order to cancel the third hearing, the Agency must state on the record at hearing that it and the affected entities are in agreement or notify the Board and the service list in writing.
- f) In order to meet statutory deadlines, hearing dates may be chosen by the assigned Board member and hearing officer without consultation with the participants. CAAA hearings need only be held in one affected area of the State.

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

Section 102.306 Prefiled Testimony

- a) The hearing officer will close the service list for purposes of prefiled testimony at 4:30 p.m. 16 days before the date of hearing.
- b) Ten days before the hearing, copies of prefiled testimony must be filed with the Clerk and served upon all people who are on the service list as closed pursuant to subsection (a) of this Section.
- c) The Board may grant a waiver of the prefiling deadline or service requirement for good cause.
- d) Participants who do not pre-file their testimony will only be allowed to testify if time remains in that hearing day. The hearing will not be continued from day to day to accommodate participants who do not prefile.

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS, PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING CONFERENCES, AND HEARINGS

Section 102.400 Service and Filing of Documents

All documents must be served and filed in accordance with 35 Ill. Adm. Code 101.Subpart C.

Section 102.402 Motions, Production of Information, and Subpoenas

Motion practice, production of information and the issuance of subpoenas in regulatory proceedings is governed by 35 Ill. Adm. Code 101. All motions and responses must be filed with the Board and served upon the hearing officer, the proponent, the Agency, and all persons on any service list established pursuant to Section 102.422(b) of this Part.

Section 102.404 Initiation and Scheduling of Prehearing Conferences

- a) *To the extent consistent with any deadline for adoption of any regulations mandated by State or federal law, prior to initiating any hearing on a regulatory proposal, the Board may assign a qualified hearing officer who may schedule a prehearing conference between the proponents and any or all of the potentially affected persons [415 ILCS 5/27(d)].*
- b) The hearing officer may schedule a prehearing conference on his or her own motion, or on the motion of the proponent or any potentially affected person. A “proponent” or “potentially affected person” is any person, as defined by the Act and 35 Ill. Adm. Code 101.202, who demonstrates any nexus to the source of the

pollutant to be controlled by the proposal or who shows some impact from the pollutant to be controlled by the proposal. A motion to schedule a prehearing conference must be directed to the hearing officer.

- c) In accordance with Section 27(d) of the Act, the notice requirements of Section 28 of the Act and Section 102.416 will not apply to prehearing conferences. However, the hearing officer will give notice to the proponents and any person who is included on the notice list of that proposal.

Section 102.406 Purpose of Prehearing Conference

The purpose of a prehearing conference is:

- a) *To maximize understanding of the intent and application of the proposal;*
- b) *To reach agreement on aspects of the proposal, if possible; and*
- c) *To attempt to identify and limit the issues of disagreement among the participants to promote efficient use of time at hearing. [415 ILCS 5/27(d)]*

Section 102.408 Prehearing Order

- a) *No record need be kept of the prehearing conference, nor shall any participant or the Board be bound by any discussions conducted at the prehearing conference [415 ILCS 5/27(d)].*
- b) *Notwithstanding subsection (a) of this Section, with the consent of all participants in the prehearing conference, the hearing officer may enter a prehearing order delineating issues to be heard, agreed facts, and other matters [415 ILCS 5/27(d)].*
- c) *If the participants in the prehearing conference agree to have a prehearing order entered pursuant to subsection (b) of this Section, the hearing officer may require that those participants furnish a draft of a proposed order setting forth the substance of the agreements reached at the prehearing conference. The hearing officer will enter that order if he agrees that it sets forth the substance of the agreement. The order will identify which participants have agreed to the substance of the order.*
- d) *A prehearing order will not be binding on non-participants in the prehearing conference [415 ILCS 5/27(d)].*

Section 102.410 Authorization of Hearing

- a) The Clerk will assign a docket number to any proposal. All regulatory proposals will be placed on the Board agenda for determination of adequacy under the applicable law and this Part. The proponent must cure any inadequacy identified by Board order before the proposal will proceed to hearing.
- b) The Board will schedule a hearing on a proposal if it finds that the proposal is *supported by an adequate statement of reasons, is accompanied by a petition signed by at least 200 persons, is not plainly devoid of merit and does not deal with a subject on which a hearing has been held within the preceding six months* [415 ILCS 5/28(a)].
- c) In accordance with Section 28(a) of the Act, if a proposal is made by the Agency, or DNR, *the Board shall schedule a public hearing without regard to the above conditions* in subsection (b) of this Section as soon as practicable [415 ILCS 5/28(a)].
- d) Pursuant to Section 28 of the Act, *the Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions* in subsection (b) of this Section [415 ILCS 5/28(a)].
- e) If the Board determines that a proposal meets the requirements of subsection (b) of this Section or is otherwise adequate under applicable law, and if any required filing fee has been paid, the Board will issue an order accepting the proposal for hearing. Such an order will be construed as starting the time clock for purposes of any first notice publication deadlines pursuant to Sections 28.2 and 28.5 of the Act.
- f) When the Board authorizes a hearing, the Chairman will designate one or more attending Board members and a qualified hearing officer. A member of the Board may serve as hearing officer if otherwise qualified.
- g) The Board may consolidate proposals for hearing or decision.

Section 102.412 Scheduling of Hearings

- a) Except as otherwise provided by applicable law, *no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned*. In the case of site-specific rules, a public hearing will be held in the affected area. Except as otherwise provided by applicable law, *in the case of state-wide regulations, hearings shall be held in at least two areas*. [415 ILCS 5/28(a)]

- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments pursuant to Section 102.108, is necessary.

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

Section 102.414 Hearings on the Economic Impact of New Proposals

- a) In accordance with Section 27(b) of the Act, except as otherwise provided by applicable law, before the adoption of any proposed rules, *the Board shall request that the Department of Commerce and Economic Opportunity conduct a study of the economic impact of the proposed rules. The Board shall conduct at least one public hearing on the economic impact of those new rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Economic Opportunity's explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as a part of any Board hearing considering such new rules. In adopting any such new rule, the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, including, but not limited to, the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois. [415 ILCS 5/27(b)]*
- b) If information of the economic impact of a proposed regulation is given at a general hearing on the proposal, the Board need not hold a special hearing on only the economic impact.

(Source: Amended at 29 Ill. Reg. 8776, effective June 8, 2005)

Section 102.416 Notice of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk will give notice of the hearing as follows or as otherwise required by applicable law:
 - 1) By notice in the Board's Environmental Register and on the Board's website;
 - 2) *At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The notice will*

include, *the date, time, place and purpose of such hearing* [415 ILCS 5/28(a)]; and

- 3) Where required by federal law, including air pollution and RCRA proposals, newspaper notice will be published at least 30 days before the hearing date.
- b) In accordance with Section 28(a) of the Act or as otherwise required by applicable law, the Clerk will give notice to the proponent and to all persons who are on the notice list in accordance with Section 102.422 of this Part.
- c) Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 *et seq.*) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the Illinois Register in lieu of newspaper notice.
- d) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsection (a), (b), or (c) of this Section.

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

Section 102.418 Record

All oral testimony will be recorded stenographically. The proposal and all attachments, the transcript, all written testimony, all exhibits admitted in connection with the hearing, and all written submissions filed with the Clerk under Section 102.108 of this Part before or after the close of the hearing will constitute the record.

Section 102.420 Authority of the Hearing Officer

As necessary to conduct the regulatory hearing, the hearing officer will have the same authorities in rulemaking proceedings as those set forth in 35 Ill. Adm. Code 101.Subpart F.

Section 102.422 Notice and Service Lists

- a) The Clerk's Office will maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses to the Clerk's Office concerning the proposal. The Clerk will serve a copy of all Board orders and hearing officer orders upon the persons appearing on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. Unless ordered otherwise by the hearing officer, participants must serve copies of all their respective filings upon the persons appearing on the service list. In deciding whether to establish a service list,

factors that the hearing officer will consider include the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.

- c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names and addresses for each proceeding in accordance with subsection (a) of this Section.

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

Section 102.424 Prehearing Submission of Testimony and Exhibits

- a) The proponent must file all written testimony and any related exhibits 21 days before the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.
- b) The hearing officer may require the prehearing filing of testimony, questions, responses, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that the procedure will provide for a more efficient hearing.
- c) All prehearing testimony, questions, responses, and any related exhibits must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h). Persons filing these prehearing documents must serve them in accordance with 35 Ill. Adm. Code 101.304(c) upon the hearing officer, the Agency, the Attorney General's Office, DNR, the proponent, and each participant appearing on any service list, unless otherwise specified by the hearing officer. The service must be initiated on or before the date that the prehearing documents are filed with the Clerk.
- d) All prehearing testimony, questions, responses, and any related exhibits must be labeled with the docket number of the proceeding, the name of the witness corresponding to the material, and the title of the material.
- e) The proponent and each participant who has filed testimony, questions, responses, or any related exhibits before hearing must bring to the hearing the number of paper copies of the material that the hearing officer designates.
- f) Testimony, questions, and responses that are timely filed before the hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the material read at the hearing. All persons testifying will be sworn and subject to cross-examination. Modifications to prehearing documents may be allowed by the hearing officer at the hearing if the modifications are either nonsubstantive in nature or would not materially prejudice another person's participation at the hearing. Objections to

hearing officer rulings allowing or disallowing the modifications are waived unless raised at the hearing.

- g) When prehearing filing of testimony, questions, responses, and any related exhibits is required pursuant to subsection (a) or (b), material that is not timely filed will be allowed at the hearing only if time permits and the hearing officer determines that allowing the material will not materially prejudice the proponent or any other participant. Any of these documents that is not allowed at the hearing because it was not timely filed before the hearing can be filed after the hearing as a public comment.
- h) For a videoconference hearing under Section 102.114, in addition to the other requirements of this Section, all written testimony, questions, responses, and any related exhibits, as well as any other document to be offered as a hearing exhibit, must be received by the Clerk's Office at least 24 hours before the scheduled start of the hearing. Any of these documents that is not filed at least 24 hours before the scheduled start of the videoconference hearing will not be allowed at the hearing, but can be filed after the hearing as a public comment.
- h) (Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

Section 102.426 Admissible Information

All information that is relevant and not repetitious or privileged will be admitted by the hearing officer.

Section 102.428 Presentation of Testimony and Order of Hearing

- a) All witnesses at hearings must be sworn;
- b) Testimony must be in narrative form; and
- c) Proponents must present testimony in support of the proposal first. Any questions or testimony in support of or opposition to the proposal must follow as directed by the hearing officer.

Section 102.430 Questioning of Witnesses

All witnesses will be subject to questioning by any person. Repetitious, irrelevant, harassing, or cumulative questioning will be prohibited by the hearing officer. The Board will not consider as substantive evidence any unsworn information that is presented in the form of a question during questioning of any witness.

SUBPART E: CERTIFICATION OF REQUIRED RULES

Section 102.500 Agency Certification

- a) *When the Agency proposes a rule which it believes to be a required rule, as defined by Section 28.2(a) of the Act the Agency shall so certify in its proposal, identifying the federal law to which the proposed rule will respond and the rationale upon which the certification is based [415 ILCS 5/28.2(b)]. The certification must include a citation to the specific section of the specific federal law to which the proposed rule will respond.*
- b) *The Board shall either accept or reject the certification within 45 days and shall reference the certification in the first notice of the proposal published in the Illinois Register as provided by the Illinois Administrative Procedure Act [415 ILCS 5/28.2(b)].*

Section 102.502 Challenge to Agency Certification

- a) If any person wishes to challenge the Agency's certification that a proposed rule is a required rule, that person must file an objection to that certification within 21 days after the date of the Board's order accepting a proposal for hearing. The objection must state the reasons that the objector believes that the proposed rule is not a required rule, and must include all arguments that the objector wishes the Board to consider. A copy of the objection must be served upon the Agency and DNR.
- b) The Agency may file a response to any objection within 14 days after the service of that objection. No reply by the objector will be allowed, unless the Board orders otherwise to avoid material prejudice.
- c) No hearing will be held on any objection filed pursuant to this Section.

Section 102.504 Board Determination

- a) The Board will rule upon any objection filed pursuant to this Subpart within 60 days after the date that the Board accepts a proposal for hearing.

- b) In ruling upon an objection to an Agency certification, the Board will consider all information in the record of that proceeding, including the proposal, the objection, and the Agency response to the objection. The burden of proof is on the objector.
- c) The Board will give notice of its determination to the objector, the Agency, DNR, and any person who has asked to be placed on the notice list pursuant to Section 102.422 of this Part for that proposal.
- d) Orders entered pursuant to this Section are interlocutory in nature and may be appealed only pursuant to 35 Ill. Adm. Code 101.308.

SUBPART F: BOARD ACTION

Section 102.600 Revision of Proposed Regulations

- a) The Board may revise the proposed regulations before adoption upon its own motion or in response to suggestions made at hearing and in written comments made prior to second notice. No additional hearing on the revisions need be held.
- b) Unless otherwise provided by applicable law, *the Board may revise the proposed regulations after hearing in response to objections or suggestions made by the Joint Committee on Administrative Rules (JCAR) pursuant to subsection (b) of Section 5.40 and subsection (a) of Section 5.110 of the Illinois Administrative Procedure Act.* The Board may make the revision where it finds:
 - 1) *That such objections or suggestions relate to the statutory authority upon which the regulation is based, whether the regulation is in proper form, or whether adequate notice was given; and*
 - 2) *That the record before the Board is sufficient to support such a change without further hearing.* [415 ILCS 5/28(a)]

Section 102.602 Adoption of Regulations

The Board adopts first notice, second notice and final opinions and orders in regulatory matters. Only the first notice proposal and the final adopted rules are published by the Secretary of State in accordance with the IAPA. In adopting any new regulation, except a required rule or an identical-in-substance regulation or as applicable law otherwise provides, *the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, including, but not limited to, the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois* [415 ILCS 5/27(b)].

Section 102.604 First Notice of Proposed Regulations

Except when otherwise directed by applicable law, the Board will give first notice of its proposed adoption, amendment, or repeal of regulations pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40]. The first notice period will be at least 45 days, and will begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

Section 102.606 Second Notice of Proposed Regulations

- a) Except when otherwise directed by applicable law, the Board will give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period will begin on the date written notice is received by JCAR, and will expire 45 days after that date, except as provided by Section 5-40 of the IAPA [5 ILCS 100/5-40]. The Board will accept comments only from JCAR during the second notice period.
- b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to objections or suggestions from JCAR. Those changes will be made pursuant to Section 102.600 of this Part.

Section 102.608 Notice of Board Final Action

The Board will give notice of its final action on a proposal to the proponent, the Agency, DNR, the Attorney General, and all persons on the notice list. The Board will publish notice of its final action in the Environmental Register and on its Web site, and will enter a written opinion stating the reasons in support of its final action.

Section 102.610 Adoption of Identical-in-Substance Regulation

- a) Prior to adopting identical-in-substance regulations, the Board will:
 - 1) Make available to the public a proposed opinion and order containing the text of the rules at the Board's Chicago Office and on the Board's Web site;
 - 2) Publish the proposed regulations in the Illinois Register;
 - 3) Serve a copy of the proposed opinion and order on USEPA; and
 - 4) Solicit comments from USEPA, the Agency, the Attorney General and the public for at least 45 days after the date of publication in the Illinois Register.
- b) *After consideration of comments from USEPA, the Agency, the Attorney General and the public, the Board will adopt the verbatim text of the USEPA regulations*

as are necessary and appropriate for authorization of the program. As provided in Section 7.2 of the Act, the Board may also make changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations [415 ILCS 5/7.2(a)]. Also, wherever appropriate, the Board regulations will reflect any consistent, more stringent regulations adopted pursuant to the rulemaking requirements of Title VII of the Act and Section 5-35 of the Illinois Administrative Procedure Act [415 ILCS 5/7.2(a)(6)].

- c) As provided by Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d), and 22.7(d) of the Act, the provisions of Title VII of the Act and Section 5-35 of the IAPA [5 ILCS 100/5-35] will not apply to identical-in-substance rulemakings.

Section 102.612 Adoption of Emergency Regulations

- a) *When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety, or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the IAPA [415 ILCS 27(c)].*
- b) *When the Board finds that a severe public health emergency exists, the Board may, in relation to any proposed regulation, order that such regulation shall take effect without delay [415 ILCS 5/27(c)]. The Board will proceed with any required hearings while the regulation continues in effect.*

Section 102.614 Adoption of Peremptory Regulations

- a) When the Board finds that a peremptory rulemaking is necessary pursuant to Section 5-50 of the IAPA, and states in writing its reasons for that finding, the Board will adopt that peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 5-70 of the IAPA.
- b) Notice of the peremptory rulemaking will be published in the Illinois Register in accordance with Section 5-50 of the IAPA.

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section 102.700 Filing of Motions for Reconsideration

Motions for reconsideration or modification of any Board order taking substantive action on a regulatory proposal must be filed in accordance with 35 Ill. Adm. Code 101.902. The contents of such motions are governed by 35 Ill. Adm. Code 101.Subpart I.

Section 102.702 Disposition of Motions for Reconsideration

An adopted rule becomes effective upon the filing of that rule with the Secretary of State. Therefore, the Board is precluded from allowing a motion for reconsideration of a final order adopting a rule, if that rule has been filed with the Secretary of State.

Section 102.704 Correction of Publication Errors

The Board may make technical corrections to proposed or adopted rules, published in the Illinois Register or filed with the Secretary of State, only in accordance with 1 Ill. Adm. Code 100.240. No hearing need be held on such corrections.

Section 102.706 Appeal

Any final Board order may be appealed to the appellate court within 35 days after the service of that order (see 35 Ill. Adm. Code 101.300(d)), pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41].

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section 102.800 Applicability

This Subpart applies to any person seeking the adoption, amendment, or repeal of an Outstanding Resource Water (ORW) designation for a surface water body or any water body segment as provided by 35 Ill. Adm. Code 303.205.

(Source: Added at 26 Ill. Reg. 3498 effective February 22, 2002)

Section 102.810 Petition

Any person may submit a petition for the adoption, amendment or repeal of an ORW designation. The petition must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served upon the Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).

(Source: Amended at 39 Ill. Reg. 2333, effective January 27, 2015)

Section 102.820 Petition Contents

Each proponent must set forth the following information in its proposal:

- a) The language of the proposed rule, amendment, or repealer identifying the surface water body or water body segment being proposed for designation, amendment, or repeal as an ORW. Language being added must be indicated by

underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100. Subpart C;

- b) A statement describing the specific surface water body or water body segment for which the ORW designation, amendment, or repeal is requested and the present designation of the surface water body or water body segment;
- c) A statement describing the area in which the specific surface water body or water body segment exists, including:
 - 1) The existence of wetlands or natural areas;
 - 2) The living organisms in that area, including endangered or threatened species of plants, aquatic life or wildlife listed pursuant to the Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species Protection Act [41 ILCS 10];
- d) A statement supporting the designation, the amendment, or the repeal, including the health, environmental, recreational, aesthetic or economic benefits of the designation, the amendment, or the repeal thereof;
- e) A statement identifying the anticipated impact on economic and social development of the ORW designation, amendment, or repeal. This statement should include:
 - 1) Impacts on the regional economy;
 - 2) Impacts on regional employment;
 - 3) Impacts on the community;
- 4) A comparison of the health and environmental impacts to the economic impact of an ORW designation;
- f) A statement describing the existing and anticipated uses of the specific surface water body or water body segment for which the ORW designation, amendment, or repeal is requested;
- g) A statement describing the existing water quality of the specific surface water body or water body segment warranting the ORW designation, amendment, or repeal;
- h) A synopsis of all testimony to be presented by the proponent at hearing;

- i) Any material to be incorporated by reference within the proposed designation pursuant to Section 5-75 of the Administrative Procedure Act [5 ILCS 100/5-75];
- j) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5ILCS 140]. [5 ILCS 100/5-40(3.5)];*
- k) Documentation of service upon all persons required to be served pursuant to Section 102.810 of this Part;
- l) Unless the proponent is the Agency or Illinois Department of Natural Resources or receives a waiver by the Board, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.160(a); and
- m) Where any information required by this Section is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

(Source: Amended at 39 Ill. Reg. 2333, effective January 27, 2015)

Section 102.830 Board Action

- a) Dismissal
 - 1) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
 - 2) Failure of the proponent to pursue disposition of the petition in a timely manner will render a petition subject to dismissal. In making this determination, the Board may consider factors, including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
 - 3) Any person may file a motion challenging the sufficiency of the petition pursuant to 35 Ill. Adm. Code 101.Subpart E.
- b) Designation of ORW. The Board must designate a surface water body or water body segment as an ORW and list it in 35 Ill. Adm. Code 303.206 if it finds:

- 1) The surface water body or water body segment is of exceptional ecological or recreational significance; and
- 2) The benefits of protection of the surface water body or water body segment from future degradation outweigh the benefits of economic or social opportunities that will be lost if the surface water body or water body segment is designated as an ORW.

(Source: Added at 26 Ill. Reg. 3498 effective February 22, 2002)

Section 102.APPENDIX A Comparison of Former and Current Rules (Repealed)

(Source: at 29 Ill. Reg. 8776, effective June 8, 2005)