

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

PART 130  
IDENTIFICATION AND PROTECTION OF TRADE SECRETS AND OTHER NON-  
DISCLOSABLE INFORMATION

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#### APPENDIX A Comparison of Former and Current Rules

**AUTHORITY:** Implementing Sections 7 and 7.1 of the Environmental Protection Act (Act) [415 ILCS 5/7 and 7.1] and authorized by Sections 7, 7.1, 26, and 27 of the Act [415 ILCS 5/7, 7.1, 26, 27].

**SOURCE:** Subparts A, B, and C originally adopted in R81-30 at 7 Ill. Reg. 16149, effective November 23, 1983. Subpart D originally adopted in R88-5(A) at 13 Ill. Reg. 12055, effective July 10, 1989; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 516, effective January 1, 2001.

#### SUBPART A: GENERAL PROVISIONS

##### Section 130.100 Purpose and Applicability

- a) Section 7(a) of the Act provides that *all files, records, and data of the Illinois Environmental Protection Agency, the Board, and DNR shall be open for reasonable public inspection except for information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; and information concerning secret manufacturing processes or confidential data submitted by any person under the Act.* [415 ILCS 5/7(a)]
- b) This Part establishes procedures to identify and protect trade secrets and other non-disclosable information.
  - 1) Subpart A of this Part sets forth general provisions that apply with respect to both trade secrets and other non-disclosable information. References in this Subpart to non-disclosable information other than trade secrets apply only to proceedings before the Board.

- 2) Subparts B and C of this Part address only trade secrets. Those Subparts apply to articles submitted to or otherwise obtained by the Board, the Illinois Environmental Protection Agency, or DNR.
- 3) Subpart D of this Part addresses only non-disclosable information other than trade secrets. That Subpart applies only to filings of articles with the Board.

#### Section 130.102 Additional Procedures

The Illinois Environmental Protection Agency and DNR each may adopt additional procedures that are not inconsistent with this Part to protect articles that are claimed or determined to represent a trade secret.

#### Section 130.104 Definitions and Severability

- a) **Definitions.** For the purpose of this Part, “State agency” refers to the Board, the Illinois Environmental Protection Agency, or DNR. Other words and terms have the meanings set forth in 35 Ill. Adm. Code 101.Subpart B, unless otherwise provided or unless the context clearly indicates otherwise.
- b) **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 130.106 Segregation of Articles

Any article, or any page or portion thereof, that is claimed or determined to represent a trade secret or other non-disclosable information must be kept segregated from articles that are open to public inspection, and must be kept secure from unauthorized access.

#### Section 130.108 Disposal of Articles

The State agency must dispose of an article that is claimed or determined to represent a trade secret or other non-disclosable information, and any copies made of that article, according to its application for authority to dispose of State records approved by the State Records Commission.

#### Section 130.110 Articles Containing Emission Data

- a) *All emission data reported to or otherwise obtained by the Illinois Environmental Protection Agency, the Board, or DNR in connection with any examination, inspection or proceeding under the Act shall be available to the public to the*

*extent required by the federal Clean Air Act Amendments of 1977 (P.L. 95-95) as amended [415 ILCS 5/7(c)].*

- b) For purposes of this Section, “emission data” means:
  - 1) The identity, amount, frequency, concentration, or other characteristics (related to air quality) of any contaminant that:
    - A) Has been emitted from an emission unit;
    - B) Results from any emission by the emission unit;
    - C) Under an applicable standard or limitation, the emission unit was authorized to emit; or
    - D) Is a combination of any of the items described in subsection (b)(1)(A), (B), or (C) of this Section.
  - 2) The name, address (or description of the location), and the nature of the emission unit necessary to identify the emission unit, including a description of the device, equipment, or operation constituting the emission unit.
- c) In addition to subsection (b) of this Section, information necessary to determine or calculate emission data, including rate of operation, rate of production, rate of raw material usage, or material balance, will be deemed to represent emission data for the purposes of this Section if the information is contained in a permit to ensure that the permit is practically enforceable.

## SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES THAT REPRESENT TRADE SECRETS

### Section 130.200 Initiation of a Claim that an Article Represents a Trade Secret

- a) The owner of an article may claim that the article represents a trade secret only by submitting to the State agency the claim letter required by subsection (b)(1) of this Section at the time the owner submits the article to the State agency. If the owner of the article submits the article to the State agency without simultaneously submitting the claim letter required by subsection (b)(1) of this Section, the article will be considered a matter of general public knowledge and cannot be protected as a trade secret.
- b) The owner of an article seeking trade secret protection must submit the following information to the State agency at the time the owner submits the article to the State agency:

- 1) A claim letter that clearly states the name of the article, briefly describes the article, and states that the article is claimed to represent a trade secret, as defined in 35 Ill. Adm. Code 101.Subpart B and the Act; and
- 2) A copy of the article marked as provided in Section 130.302 of this Part.
- c) The owner of an article seeking trade secret protection must submit to the State agency a statement of justification for the claim meeting the requirements of Section 130.203 of this Subpart. The owner of the article may submit the statement of justification at the time the owner submits the article, or at a later time, but in no event later than the time limit established pursuant to Section 130.202 of this Subpart.
- d) If the State agency is provided with a claim letter required by subsection (b)(1) of this Section, the State agency must consider the article a trade secret and must protect it from disclosure pursuant to Subpart C of this Part until the State agency makes a final determination and the appeal time has expired.
- e) The owner of an article seeking trade secret protection is not required to serve any other persons with the article or the page or portion thereof for which the owner seeks trade secret protection.

Section 130.201 State Agency Request for Justification of Claims

- a) The State agency may request that the owner of an article claimed to represent a trade secret submit a statement of justification meeting the requirements of Section 130.203 of this Subpart. The State agency may make the request when the article is submitted or obtained, or at any later time.
- b) The request under subsection (a) of this Section must be in writing. The State agency must set forth in the request the reasoning for the request. Reasons for the request may include the following:
  - 1) The State agency has received or reasonably expects to receive a request from the public to disclose the article;
  - 2) The article is required to be available to the public in a proceeding before the State agency;
  - 3) Information within the article is required to be contained in a permit issued by the State agency;
  - 4) To facilitate public participation in a proceeding before the State agency;

- 5) A regulation requires that the State agency determine whether the article represents a trade secret at the time that the article is submitted to or obtained by the State agency; or
- 6) Determining the validity of the claim will facilitate the timely performance of State agency responsibilities.

Section 130.202 Time Limit for Delayed Submission of Justification

- a) Within 10 working days after the date on which the owner of an article claimed to represent a trade secret receives a State agency request for justification under Section 130.201 of this Subpart, the owner must submit to the State agency a statement of justification meeting the requirements of Section 130.203 of this Subpart.
- b) The State agency may extend the time period under subsection (a) of this Section for a second period of 10 working days if, within the first 10 day period, the owner of the article requests an extension and demonstrates that the extension is necessary to complete the statement of justification.

Section 130.203 Contents of Statement of Justification

A statement of justification must contain the following:

- a) A detailed description of the procedures used by the owner to safeguard the article from becoming available to persons other than those selected by the owner to have access thereto for limited purposes;
- b) A detailed statement identifying the persons or class of persons to whom the article has been disclosed;
- c) A certification that the owner has no knowledge that the article has ever been published or disseminated or has otherwise become a matter of general public knowledge;
- d) A detailed discussion of why the owner believes the article to be of competitive value; and
- e) Any other information that will support the claim.

Section 130.204 Waiver of Statutory Deadlines

- a) When the owner of an article seeking trade secret protection submits a statement of justification under this Subpart to the State agency, the owner must simultaneously submit to the State agency a waiver of any statutory deadline for the State agency to decide the underlying proceeding or matter, such as a permit application.
- b) The waiver under subsection (a) of this Section must extend the statutory deadline for a period equal to the period by which the decision on the underlying proceeding or matter is delayed due to any subsequent trade secret justification and determination process plus 45 days.

Section 130.206      Deadline for State Agency Trade Secret Determination

- a) The State agency must determine whether the article represents a trade secret within 45 days after the date it receives a complete statement of justification as prescribed in Section 130.203 of this Subpart.
- b) The owner of an article seeking trade secret protection may extend the time period for the State agency to determine whether the article represents a trade secret by submitting to the State agency a waiver of the deadline for the State agency to determine whether the article represents a trade secret.

Section 130.208      Standards for State Agency Determination

- a) An article will be determined to represent a trade secret if:
  - 1) The owner has complied with the procedures for making a claim and justification as prescribed by this Subpart; and
  - 2) The statement of justification demonstrates that:
    - A) The article has not been published, disseminated, or otherwise become a matter of general public knowledge; and
    - B) The article has competitive value.
- b) There will be a rebuttable presumption that an article has not been published, disseminated, or otherwise become a matter of general public knowledge, if:
  - 1) The owner has taken reasonable measures to prevent the article from becoming available to persons other than those selected by the owner to have access to the article for limited purposes; and

- 2) The statement of justification contains a certification that the owner has no knowledge that the article has ever been published, disseminated, or otherwise become a matter of general public knowledge.
- c) The State agency may determine that any page or portion of the article represents a trade secret without finding that the entire article represents a trade secret.

Section 130.210 State Agency Actions Following a Negative Determination

- a) If the State agency determines that an article, or any page or portion thereof, does not meet the standards specified in Section 130.208(a)(1) or (2) of this Subpart, the State agency must deny the claim for trade secret protection for the article or page or portion thereof, and must give written notice of the determination to the owner of the article and any requester pursuant to subsection (b) of this Section.
- b) Written notice that the State agency denied a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:
  - 1) A statement of the State agency's reasoning for denying the claim;
  - 2) A notification that the State agency determination may be reviewed pursuant to Section 130.214 of this Subpart; and
  - 3) A notification that the State agency will cease protecting the article, or the page or portion thereof, as a trade secret unless the State agency is served with notice of the filing of a petition for review of the State agency's determination within 35 days after service of the notice of denial on the owner and any requester.
- c) If the State agency is served with notice of the filing of a petition for review of its determination within 35 days after service of the notice of denial on the owner and any requester, the State agency must notify the requester of the action and must continue to protect the article, or the page or portion thereof, pursuant to Subpart C of this Part until the State agency receives official notification of a final order by a reviewing body with proper jurisdiction that does not reverse the State agency determination and that is not subject to further appeal.
- d) If the State agency does not receive the notification of a petition for review within 35 days after service of the notice of denial on the owner and any requester or does receive official notification of a final, non-appealable action that does not reverse the State agency determination, the article will not be protected pursuant to Subpart C of this Part and the State agency must so notify the owner and any requester by certified mail, return receipt requested.

Section 130.212 State Agency Actions Following a Positive Determination

- a) If the State agency determines that an article, or any page or portion thereof, meets the standards specified in subsection 130.208(a)(1) and (2) of this Subpart, the State agency must grant the claim for trade secret protection for the article or page or portion thereof, and must give written notice of the determination to the owner of the article and any requester pursuant to subsection (b) of this Section.
- b) Written notice of the granting of a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:
  - 1) A statement of the State agency's reasoning for granting the claim;
  - 2) A notification that the State agency determination may be reviewed pursuant to Section 130.214 of this Subpart; and
  - 3) A notification that the article, or the page or portion thereof, will be protected pursuant to Subpart C of this Part until the State agency receives official notification of a final order by a reviewing body that reverses the State agency determination and that is not subject to further appeal.
- c) The State agency must continue to protect an article, or the page or portion thereof, for which trade secret protection has been granted pursuant to Subpart C of this Part until the State agency receives official notification of a final order by a reviewing body with proper jurisdiction that reverses the State agency determination and that is not subject to further appeal.

Section 130.214 Review of State Agency Trade Secret Determination

- a) An owner or requester who is adversely affected by a final determination of the Illinois Environmental Protection Agency or DNR pursuant to this Subpart may petition the Board to review the final determination within 35 days after service of the determination. Appeals to the Board will be pursuant to 35 Ill. Adm. Code 105.Subparts A and B.
- b) An owner or requester who is adversely affected by a final determination of the Board pursuant to this Subpart may obtain judicial review from the appellate court by filing a petition for review pursuant to Section 41 of the Act [415 ILCS 5/41].
- c) If the State agency fails to make a final determination within the time limits prescribed by this Subpart, the State agency must continue to protect the article as

set forth in Subpart C of this Part until the State agency issues a final determination pursuant to this Subpart.

Section 130.216      Effect of a Determination of Trade Secret Status on Other State Agencies

- a)      Except as provided in subsection (b) of this Section, a claim or determination by one State agency that an article represents a trade secret made pursuant to this Subpart will apply to that same article when in the possession of either of the other two State agencies.
- b)      When an article described in subsection (a) of this Section is the subject of a review before the Board pursuant to Section 130.214(a) of this Subpart, the article will be treated as a trade secret only unless or until the Board determines that the article does not represent a trade secret.

Section 130.218      Status of Article Determined or Claimed to Represent a Trade Secret Before January 1, 2001

- a)      Any article that was determined by a State agency before January 1, 2001 to represent a trade secret in accordance with State agency procedures adopted pursuant to the IAPA will be deemed to have been determined to represent a trade secret for the purposes of this Part. The State agency must protect the article in accordance with Subpart C of this Part.
- b)      If a State agency possesses an article that was claimed before January 1, 2001 to represent a trade secret and the State agency did not determine before January 1, 2001 whether the article represents a trade secret in accordance with procedures adopted pursuant to the IAPA, the article is deemed to have been claimed to represent a trade secret for the purposes of this Part. These claims are deemed pending with unlimited waivers of any deadlines for decision.

Section 130.220      Extension of Deadlines to Participate in Proceedings

- a)      Upon the State agency's finding that a person has satisfied the requirements of subsection (b) of this Section, the State agency must extend any deadline for the person to participate in the proceeding before the State agency until 10 days after the State agency determines the trade secret status of the article.
- b)      The person seeking an extension to participate in a proceeding before the State agency has the burden to demonstrate that the person will be adversely affected in the proceeding due to the timing of the State agency's trade secret determination, that the person could not have avoided the resulting delay by making an earlier request, and that the article is relevant to the proceeding.

## SUBPART C: PROCEDURES FOR PROTECTING ARTICLES THAT REPRESENT TRADE SECRETS

### Section 130.300      Applicability

Any article that is claimed or determined to represent a trade secret pursuant to Subpart B of this Part must be protected from unauthorized disclosure pursuant to this Subpart.

### Section 130.302      Owner's Responsibility to Mark Article

- a)      When an entire article is claimed to represent a trade secret, the owner must mark the article with the words "Trade Secret" in red ink on the face or front of the article.
- b)      When less than an entire article is claimed to represent a trade secret, the owner must:
  - 1)      Mark the article with the words "Trade Secret" in red ink on the face or front of the article;
  - 2)      Indicate on the face or front of the article which page or portion of the article is claimed to represent a trade secret;
  - 3)      Mark every page or portion of the article that is claimed to represent a trade secret with the words "Trade Secret;" and
  - 4)      Furnish the State agency with a second copy of the article that is marked pursuant to subsections (b)(1) and (2) of this Section and from which the page or portion of the article that is claimed to represent a trade secret is deleted.

### Section 130.304      State Agency's Responsibility to Mark Article

- a)      When an entire article is determined to represent a trade secret pursuant to Section 130.208 of this Part, the State agency must mark the article with the word "DETERMINED" in red ink on the face or front of the article and must also mark any claim letter submitted for the article.
- b)      When less than an entire article is determined to represent a trade secret pursuant to Section 130.208 of this Part, the State agency must:

- 1) Mark the article with the word “DETERMINED” in red ink on the face or front of the article;
- 2) Indicate on the face or front of the article and any claim letter submitted for the article which page or portion of the article is determined to represent a trade secret; and
- 3) Mark every page or portion of the article that is determined to represent a trade secret with the word “DETERMINED.”

Section 130.306      Transmission of Article Between State Agencies

Before transmitting any article that is claimed or determined to represent a trade secret to another State agency, the State agency must ensure that the article is marked pursuant to Sections 130.302 and 130.304 of this Subpart and is clearly distinguished and segregated from other transmitted materials.

Section 130.308      Public Access to Information Related to Article

- a) A copy of the claim letter submitted pursuant to Section 130.200(b)(1) of this Part will be open to public inspection.
- b) When an article was determined to represent a trade secret before January 1, 2001, and no claim letter exists, the State agency must prepare a statement that will be open to public inspection, and that names and briefly describes the article.
- c) When a page or portion of an article is claimed or determined to represent a trade secret, a copy of the article must be open to public inspection, with the part or portion of the article that is claimed or determined to represent a trade secret or that would lead to disclosure of the trade secret deleted.

Section 130.310      Access to Claimed or Determined Article

- a) The State agency must designate the State agency employees or officers who are authorized to review articles that are claimed to represent trade secrets for the purpose of making a determination pursuant to Section 130.208 of this Part.
- b) Access to an article that is claimed or determined to represent a trade secret must be limited to:
  - 1) Employees or officers designated pursuant to subsection (a) of this Section;

- 2) Other employees, officers, or authorized representatives of the State specifically authorized by the State agency to have access to the article for the purpose of carrying out the Act or regulations promulgated thereunder or when relevant to a proceeding or matter under the Act; or
  - 3) Employees, officers, or authorized representatives of the United States who are specifically authorized by the State agency to have access to the article for the purpose of carrying out federal environmental statutes or regulations.
- c) The State agency must maintain the following information with regard to an article that is claimed or determined to represent a trade secret:
- 1) A record of the number of copies held by the State agency;
  - 2) A log of the location of all copies; and
  - 3) A log of all persons who are authorized to review the article or copies thereof.

Section 130.312      Unauthorized Disclosure or Use of Article

- a) The State agency must ensure that all persons who are authorized to have access to an article that is claimed or determined to represent a trade secret are given notice of the restrictions on disclosure and use of the article contained in this Subpart.
- b) No State agency officer, employee, or authorized representative may disclose, except as authorized by this Subpart, or use for private gain or advantage, any article that is claimed or determined to represent a trade secret.
- c) Each State agency officer, employee, or authorized representative must take reasonable measures to safeguard an article that is claimed or determined to represent a trade secret and to protect against disclosure that is inconsistent with these rules.
- d) Each authorized representative of the State agency who is furnished with access to an article that is claimed or determined to represent a trade secret pursuant to this Part must use or disclose that information only as authorized by the contract or agreement under which the person is authorized to represent the State agency.

Section 130.314      Limitation on Copying Article

No State agency officer, employee, or authorized representative of the State or the United States may copy an article that is claimed or determined to represent a trade secret pursuant to this Part except when authorized to do so by the State agency officer or employee designated to review the article pursuant to Section 130.312(a) of this Subpart. All copies must be recorded and logged in accordance with Section 130.312(c) of this Subpart.

#### SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN TRADE SECRETS

##### Section 130.400      General

This Subpart applies only to filings of articles with the Board, and only with respect to Board determinations of whether articles are non-disclosable information other than trade secrets. “Non-disclosable information” is defined in 35 Ill. Adm. Code 101.Subpart B.

##### Section 130.402      Who May View Non-Disclosable Information

*Any information accorded confidential treatment may be disclosed or transmitted to other officers, employees, including Board Members, Board attorneys, environmental scientists of the Board’s technical unit, Board hearing officers, the Clerk, Assistant Clerk, or authorized representatives of this State or of the United States concerned with or for the purposes of carrying out the Act or the federal environmental statutes and regulations; provided, however, that such information shall be identified as confidential by the Board, as the case may be [415 ILCS 5/7(e)].*

##### Section 130.404      Application for Non-Disclosure

- a) Except as provided in subsection (c)(4) of this Section, the applicant must file a single copy of the following:
  - 1) The article that is sought to be protected from disclosure; and
  - 2) The application for non-disclosure.
- b) When an entire article is sought to be protected from disclosure, the applicant must mark the article with the words “NON-DISCLOSABLE INFORMATION” in red ink on the face or front of the article.
- c) When less than an entire article is sought to be protected from disclosure, the applicant must:
  - 1) Mark the article with the words “NON-DISCLOSABLE INFORMATION” in red ink on the face or front of the article;

- 2) Indicate on the face or front of the article which page or portion of the article is claimed to be non-disclosable information;
  - 3) Mark every page or portion of the article sought to be protected from disclosure with the words “NON-DISCLOSABLE INFORMATION;”
  - 4) File with the Clerk a second copy of the article that is marked pursuant to subsections (c)(1) and (c)(2) of this Section and from which the page or portion sought to be protected from disclosure is deleted.
- d) The applicant is not required to serve any other persons with the article or the page or portion thereof for which the applicant seeks protection from disclosure.
- e) The application for non-disclosure must contain the following:
- 1) Identification of the particular non-disclosure category into which the material that is sought to be protected from disclosure falls (see 35 Ill. Adm. Code 101.202 for the definition of “non-disclosable information”);
  - 2) A concise statement of the reasons for requesting non-disclosure;
  - 3) Data and information on the nature of the material that is sought to be protected from disclosure, identification of the number and title of all persons familiar with the data and information, and a statement of how long the material has been protected from disclosure;
  - 4) An affidavit verifying the facts set forth in the application for non-disclosure that are not of record in the proceeding; and
  - 5) A waiver of any decision deadline in accordance with Section 130.204 of this Part.

Section 130.406      Public Inspection

- a) The public cannot inspect material for which a non-disclosure application is pending before the Board.
- b) If the Board determines that the material is not entitled to be protected from disclosure, the public cannot inspect the material:
  - 1) Until the time for appeal of the Board’s determination has expired; or
  - 2) If an appeal of the Board’s determination is filed, until the Board receives official notification of a final order of a court with proper jurisdiction that

does not reverse the Board’s determination and that is not subject to further appeal.

- c) If the Board determines that the material is entitled to be protected from disclosure, the Board will protect from public inspection any page or portion of the material that the Board determined to be non-disclosable information until the Board receives official notification of a final order of a court with proper jurisdiction that reverses the Board’s determination and that is not subject to further appeal.

Section 130.408 Board Order

- a) If the Board determines that the article or any page or portion thereof is non-disclosable information, the Board will mark the word “DETERMINED” on the face or front and on every page or portion determined to be non-disclosable information.
- b) If the Board determines that the article, or any page or portion thereof is not non-disclosable information, the Board may enter a conditional non-disclosure order allowing the applicant to withdraw the material addressed in the order. If the applicant fails to withdraw the material by the deadline given in the Board order, the material will be returned to the Clerk’s normal file and will be available for the public to inspect.

APPENDIX A Comparison of Former and Current Rules

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

FORMER PART 120	CURRENT SECTION
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120.305	130.302
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120.350	130.312
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120.401	130.102