

## ILLINOIS POWER AGENCY

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Monitoring of Contracts Administered by the Illinois Power Agency
- 2) Code Citation: 83 Ill. Adm. Code 1210
- 3) 

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
1210.10	New Section
1210.20	New Section
1210.30	New Section
1210.40	New Section
1210.50	New Section
1210.60	New Section
1210.70	New Section
1210.80	New Section
1210.90	New Section
- 4) Statutory Authority: 3855 ILCS 5/1-20(b)(23); 20 ILCS 3855/1-35(1)
- 5) A Complete Description of the Subjects and Issues Involved: To comply with Section 1-35(1) of the Illinois Power Agency Act [20 ILCS 3855/1-35(1)], the Illinois Power Agency ("IPA") is submitting the following Proposed Rules. The Proposed Rules will focus on the statutory mandate that the IPA shall:

"Establish procedures for monitoring the administration of any contract administered directly or indirectly by the Agency; except that the procedures shall not extend to executed contracts between electric utilities and their suppliers." [20 ILCS 3855/1-35(1)].

In developing draft rules, the Agency was informed by the following considerations: First, the Agency enters into contracts of vastly different types. For instance, a contract calling on the Agency to purchase renewable energy credits for a 5 year period from a solar photovoltaic site owner is very different than its contract with its procurement planning consultant for consulting services. A contract administration approach too prescriptive in nature would not allow the Agency the flexibility necessary to adapt its procedures as needed to effectively monitor the administration of all its contracts.

Second, the Agency is young and still growing. Founded in 2007 through the enactment of the Illinois Power Agency Act, the IPA had one employee at its inception and for its first few years of existence. The IPA currently has five full-time employees and one part-time employee, and is considering hiring a full-time dedicated contract

## ILLINOIS POWER AGENCY

## NOTICE OF PROPOSED RULES

administrator. Further, multiple legislative proposals this spring called on it to expand its statutory responsibilities (likely necessitating growth in its staff). Uncertainty surrounding future responsibilities and internal resources underscore the Agency's need for flexibility and the ability to responsively adapt.

Third, the Agency already maintains internal guidelines for the monitoring and administration of contracts. These are manifest in its internal policies and Fiscal Operations Manual, both of which are updated on an annual basis by the Agency. Operational controls established through internal policies allow the Agency's significantly more adaptability than controls established through administrative rules, and can more easily be updated to reflect the Agency's needs, capacity, and experiences.

With these considerations in mind, the IPA has drafted contract administration rules that allow it to meet the statutory requirement for contract administration rule development while offering the flexibility necessary to handle the variety in contracts administered and adjust to any changes in its responsibilities.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments should be filed, within 45 days after the date of this issue of the *Illinois Register* with:

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## ILLINOIS POWER AGENCY

## NOTICE OF PROPOSED RULES

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: As these rules address internal Agency contract administration, there should be minimal impact on any small businesses, small municipalities, and not for profit corporations.
  - B) Reporting, bookkeeping or other procedures required for compliance: The rules envision the Agency developing and utilizing an internal Fiscal Operations Manual, which the Agency has already developed and adopted.
  - C) Types of professional skills necessary for compliance: No new professional skills are anticipated to be required for compliance, although the Agency has had internal discussions about hiring a dedicated contract administrator with specialized skills as its workload grows.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized in a prior Agency regulatory agenda, but will be summarized in the Agency's July 2015 regulatory agenda.

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

## ILLINOIS POWER AGENCY

## NOTICE OF PROPOSED RULES

TITLE 83: PUBLIC UTILITIES  
CHAPTER III: ILLINOIS POWER AGENCY  
SUBCHAPTER a: CONTRACTS AND FEESPART 1210  
MONITORING OF CONTRACTS ADMINISTERED BY  
THE ILLINOIS POWER AGENCY

## Section

1210.10	Scope
1210.20	Definitions
1210.30	Compliance with State Comptroller Act Requirements
1210.40	Compliance with Public Utilities Act Requirements
1210.50	Compliance with the Illinois Power Agency Act Requirements
1210.60	Fiscal Operations
1210.70	SAMS Accounting and Reporting Requirements
1210.80	Use of Outside Experts
1210.90	Confidentiality

**AUTHORITY:** Implementing, and authorized by Section 1-35(1) of, the Illinois Power Agency Act [20 ILCS 3855/1-35(1)].

**SOURCE:** Adopted at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 1210.10 Scope**

This Part governs the Agency's process for monitoring the administration of any contract administered directly or indirectly by the Agency to comply with the requirements of the Illinois Power Agency Act and requirements of other statutes or rules triggered by the Agency's actions.

**Section 1210.20 Definitions**

The following definitions apply to this Part:

"Act" means the Illinois Power Agency Act [20 ILCS 3855].

"Agency" means the Illinois Power Agency.

"Comptroller" means the Illinois Office of the Comptroller.

## ILLINOIS POWER AGENCY

## NOTICE OF PROPOSED RULES

"Commission" means the Illinois Commerce Commission.

"Contract Administration" means the administration and monitoring of all Agency contracts administered directly or indirectly to comply with the requirements of the Illinois Power Agency Act and other applicable statutes.

"Director" means the Director, [Interim Director or Acting Director](#) of the Illinois Power Agency.

"FOM" means the Financial Operations Manual maintained by the Agency.

"SAMS" means the Statewide Accounting Management System of the Comptroller.

**Section 1210.30 Compliance with State Comptroller Act Requirements**

The Agency will comply with the accounting requirements of the State Comptroller Act [15 ILCS 405] to the extent that the Agency is required by law, or elects, to submit Agency contract documentation and related financial information to the Comptroller to fulfill applicable reporting and compliance requirements.

**Section 1210.40 Compliance with Public Utilities Act Requirements**

The Agency will comply with contract administration and monitoring requirements of the Public Utilities Act [220 ILCS 5] to the extent that the Agency is required by law, or elects, to submit contract documentation and related financial information to the Commission for review and authorization.

**Section 1210.50 Compliance with the Illinois Power Agency Act Requirements**

The Agency will comply with contract administration and monitoring requirements of the Act, specifically with respect to the retention of its Procurement Planning Consultant and its Procurement Administrator (see Section 1-75 of the Act), and any contracts entered into by the Agency to purchase renewable energy resources (see Section 1-56 of the Act).

**Section 1210.60 Fiscal Operations**

## ILLINOIS POWER AGENCY

## NOTICE OF PROPOSED RULES

The Agency will maintain and update from time to time FOM, a manual describing internal Agency operations and procedures governing all Agency activities related to financial and contractual requirements.

**Section 1210.70 SAMS Accounting and Reporting Requirements**

The Agency will follow SAMS and the Agency's FOM. If the two reference materials conflict, the Agency will follow SAMS and make appropriate changes to the Agency's FOM.

**Section 1210.80 Use of Outside Experts**

To the extent authorized by the Act, the Agency may retain outside consultants to develop, update, review or verify documents or records developed pursuant to this Part.

**Section 1210.90 Confidentiality**

In monitoring the administration of any contract entered into by the Agency, *the Agency will comply with its statutory responsibility to provide adequate protection for confidential and proprietary information furnished, delivered, or filed by any person, corporation, or other entity* (Section 1-120 of the Act).