

# How Rules Are Made In Illinois

## What Happens During the Rulemaking Process?

When State agencies wish to adopt or change rules that affect anyone outside the agency itself, they must follow certain rulemaking procedures outlined in the [Illinois Administrative Procedure Act](#) (IAPA) [5 ILCS 100]. The details of the process vary depending on the type of rule and the concerns raised by the affected public.

Through the IAPA, the General Assembly delegates to executive branch State agencies authority to implement statutory law (Public Acts) via administrative law (rules/regulations). For example, a statute may establish a grant program and place it under the authority of a State agency. The agency will then propose administrative rules addressing details such as the application process and eligibility criteria.

Under the IAPA, the Joint Committee on Administrative Rules exercises oversight of the rulemaking process on behalf of the entire General Assembly to insure that agency rules meet the requirements of the IAPA and do not exceed the authority that the GA has granted to the agency in statute. The IAPA also requires any agency that implements discretion in administering a program to include in its rules the standards by which the agency shall exercise this power. If an agency is given, in statute, discretion to determine who shall receive a benefit (e.g., public assistance, a license or permit, a grant, a scholarship, a State contract) or a penalty (e.g., a fine, revocation of a license or permit, denial or termination of assistance), its rules must clearly spell out the standards that the agency will use to make these determinations.

## Types of Rules

Four categories of rulemaking can be conducted by State agencies:

**Proposed Rules** – New rules and rule amendments that must undergo public comment and JCAR review prior to adoption. This process can take from 90 days to a year to complete. The vast majority of State agency rules fall into this category.

**Emergency rules** – Temporary rules that take effect immediately or up to 10 days after filing with the Secretary of State, but remain in effect for no more than 150 days. The IAPA allows use of emergency rulemaking when an agency determines that a "threat to the public interest, safety or welfare" requires rules to be adopted in less time than would be needed to complete proposed rulemaking. JCAR reviews emergency rules to insure that they meet these criteria. If an agency wants to maintain the policy established in the temporary emergency rule, a companion proposed rule must also be adopted. The companion proposed rulemaking should be adopted before the emergency rule expires. Agencies cannot file the same emergency rule more than once within a 24-month period, unless the General Assembly makes an exception to this limit and to the 150-day limit in statute. Statutes may also authorize agencies to use emergency rulemaking for specific purposes.

**Peremptory Rules** – Rules implementing federal regulations, collective bargaining agreements or court orders; i.e., measures that specify exactly how they must be enforced and do not allow the

agency any discretion. Peremptory rules must be filed within 30 days after the action they implement and take effect immediately. They do not require public comment since they are dictated by an outside authority and cannot be changed. JCAR reviews peremptory rules to insure that they meet IAPA criteria for this form of rulemaking.

**Required/Internal Rules** – Rules that establish the organizational structure of an agency, set forth procedures for meetings, or establish procedures for responding to requests for information under the Freedom of Information Act. Most, but not all, of these rules are contained in Title 2 of the Illinois Administrative Code. Internal rules take effect immediately upon filing and do not require public comment or JCAR review prior to their adoption.

## **How to Track Rulemaking Activity**

### ***Illinois Register***

All rulemakings are published in their entirety in the *Illinois Register*, a weekly publication of the Secretary of State. The *Register* is published on Friday, or if Friday is a State holiday, on the next State business day. Generally, rulemakings appear in the *Register* 10 to 14 days after they are filed with the Secretary of State.

Register issues are identified by a yearly volume number (from Vol. 1 in 1977 through the current Vol. 40 for 2016) and a weekly issue number (Issue 1 for the first issue of the year, Issue 52 or 53 for the final issue). Pages are numbered continuously throughout the year, beginning with page 1 in the first issue of the year and usually ending with 15,000 to 20,000 pages by the end of the year. Citations for material that appear in the *Register* are by volume number and page number (e.g., 40 Ill. Reg. 1535).

The most recent edition of the *Register* and electronic versions of all *Register* issues since October 2002 can be viewed on the Illinois General Assembly and the Secretary of State website (or [at this link](#)).

### **SOS Indexes**

The Secretary of State's Index Department publishes weekly two indexes of rulemaking activity. The Cumulative Index lists, by Title, Part and *Register* issue and page number, all rulemaking activity that commenced in the current calendar year. The Sections Affected Index lists all currently pending rulemaking activity, regardless of whether initiated during the current or the prior calendar year, by Section number and *Register* page number.

### **Agencies**

Many agency websites post information about their recently proposed or adopted rulemakings.

### **The Flinn Report**

Summaries of all rulemakings that appear in each week's *Register* can be found in [The Flinn Report](#), JCAR's online newsletter (Illinois General Assembly website – Legislative Support Services – JCAR – Flinn Report).

The Flinn Report is posted on the same day as the corresponding *Register* issue. It summarizes the subject matter and impact of all proposed, adopted, emergency and peremptory rulemakings for that week; summarizes all newly adopted rules and any significant changes made since they were originally proposed; lists proposed rules that have been submitted for JCAR review (Second Notices); includes contact information for submitting comments or requesting copies from agencies; and lists significant JCAR meeting actions.

All Flinn Report issues for the previous 6 months appear on the JCAR website. To request issues more than 6 months old, [contact JCAR](#) directly.

## **Steps in the Proposed Rulemaking Process**

### **First Notice**

The proposed rulemaking process officially begins when a proposed rule is published in the *Illinois Register*. The date of *Register* publication begins the First Notice period, during which the agency proposing the rulemaking must accept comments from the affected public. The First Notice period must continue for at least 45 days, but agencies may continue to accept public comment for a longer period.

Proposed rules appearing in the *Register* include a Notice Page that lists the Title, Part and Sections being adopted, amended or repealed; an explanation of the content and purpose of the rulemaking; the State or federal laws authorizing the rulemaking; other rulemakings pending on the same Part; a regulatory flexibility analysis; and contact information (agency contact person's name, address, telephone number, e-mail address, etc.) for persons wishing to submit comments on the proposed rulemaking.

A proposed rulemaking is identified by its Title and Part number, followed by the volume and page number of its First Notice *Register* publication; for example, 68 Ill. Adm. Code 1245; 39 Ill. Reg. 14775 refers to a Department of Financial and Professional Regulation rulemaking (Title 68, Part 1245) with First Notice appearing in Vol. 39 of the *Register* on page 14775 (Nov. 13, 2015).

### **Regulatory Flexibility**

The IAPA requires agencies to take particular notice of the impact a proposed rulemaking has on small businesses, small municipalities, and non-profit organizations and to attempt to minimize the economic burden the rulemaking may impose on these entities. An agency, JCAR, the Governor, an affected local government, 25 interested individuals, or an association representing at least 100 interested persons may request that the Department of Commerce and Economic Opportunity perform an analysis of the proposed rulemaking to determine this impact. Agencies must state on the proposed rulemaking's Notice Page whether the rulemaking impacts these entities and provide a final analysis to JCAR at Second Notice.

## **Public Hearings**

The IAPA requires agencies to hold public hearings on proposed rulemakings if so requested by JCAR, the Governor, an affected local government, 25 interested individuals, or an association representing at least 100 interested individuals. Requests for public hearings on a proposed rulemaking must be submitted to the agency within 14 days after the proposed rulemaking is published in the *Register*. An agency may decide on its own to hold hearings on a proposed rulemaking. Notices of public hearings are published in the *Register* and appear in the Flinn Report.

Hearings during the First Notice period are conducted by the agency and are subject to reasonable rules designed to prevent excessive length or repetition of comments. Generally, persons testifying at public hearings are asked to bring a printed copy of their remarks and to limit their oral testimony to 5 minutes or less. Agencies may respond to comments at the hearing, but must include their responses to all commentors in the Second Notice materials they submit to JCAR.

## **Second Notice**

When an agency is ready to submit a rulemaking for JCAR review, it files Second Notice documents. These documents include a summary of the rulemaking and any changes the agency made to its proposed during First Notice; an estimate of the rulemaking's impact on State finances (e.g., how much will it cost, or save, the agency annually); a final regulatory flexibility analysis (i.e., the economic impact on the regulated parties); and a summary of public comment received during First Notice, along with the agency's responses to these comments.

After JCAR accepts a Second Notice, the rulemaking is scheduled for consideration at a JCAR meeting within the next 45 days (the Second Notice period). JCAR and the affected agency may agree to extend the Second Notice period for that rulemaking for an additional 45 days to resolve remaining issues. The rulemaking will be reconsidered at a subsequent meeting.

Once Second Notice has begun, no further changes may be made to a proposed rulemaking unless agreed to by both JCAR and the agency. For this reason, public comments on a rulemaking that has been moved to Second Notice should be [submitted to JCAR](#) via letter, fax, phone or e-mail.

A list of rulemakings recently submitted for Second Notice appears weekly in The Flinn Report, on the JCAR website and in the *Illinois Register*. Rulemakings slated for consideration at the next scheduled JCAR meeting, with links to the revised rulemaking text if the agency has made First Notice changes, can be viewed [here](#).

## **JCAR Action**

JCAR is a commission of 12 legislators that equally represent both houses of the General Assembly and both parties within those houses. It meets monthly, in Springfield if the General Assembly is in session, and in Chicago when not in session. The time, date and location of the next scheduled JCAR meeting can be found [here](#). JCAR meetings are open to the public and may be live-streamed at the JCAR website, but only agency representatives may speak at these meetings. Others who wish to comment should do so by contacting JCAR (see Second Notice) prior to the meeting.

JCAR members may take any of the following actions concerning a proposed rulemaking:

**No Objection** means that JCAR finds no grounds for action against the rulemaking; it does not necessarily imply approval of the content of the rule. A rulemaking that receives a Certification of No Objection may be adopted by the agency at any time after the agency receives this Certificate, so long as it is within one year after its proposal date in the *Register*.

A **Recommendation** means that JCAR has concerns that the agency should address, such as clarification through further rulemaking, a change in rule text, more timely rules proposal, etc. If an agency receives a Recommendation, it is required by JCAR rule to respond within 90 days, but it is still free to adopt the rulemaking after receipt of the Certificate of No Objection.

An **Objection** indicates that JCAR has determined the proposed rulemaking is not consistent with statute, has an adverse economic impact on small businesses, small municipalities, and non-profit organizations, or fails to meet some other standard established by the IAPA, or that the rulemaking process failed to meet the requirements of the IAPA. An Objection requires an agency response within 90 days, and precludes the agency from adopting the rulemaking until JCAR has received the response. If the agency fails to respond within 90 days, the rulemaking dies and cannot be adopted. Notices of Objection are published in the *Register*.

A **Filing Prohibition**, in conjunction with an Objection, prohibits the agency from adopting the rulemaking because JCAR believes the rulemaking constitutes a threat to the public interest, safety or welfare. An agency generally must agree to make modifications to the rulemaking before JCAR will withdraw a Filing Prohibition and allow the rule to be adopted. A Filing Prohibition may remain in effect up to 180 days; if it is not withdrawn by that time it becomes permanent and precludes the rulemaking from being adopted. Notices of Filing Prohibition are published in the *Register*.

## **Adoption**

Once an agency receives a Certificate of No Objection, or duly responds to an Objection within 90 days, it may adopt the rulemaking with any Second Notice changes to which the agency and JCAR have agreed during the review process (if any changes were requested or necessary) and any modifications the agency makes in response to a JCAR Objection.

Notices of adopted rulemakings appear in the *Register*. The Notice Page for an adopted rulemaking includes the effective date of the rulemaking, the *Register* citation where the rulemaking was proposed, and any changes since First Notice.

An agency must adopt a proposed rulemaking within one year after its original First Notice publication in the *Register*. If it fails to do so, the rulemaking expires and cannot be adopted. An exception may occur when JCAR has issued a Filing Prohibition to a rulemaking, which tolls the one-year expiration until the Filing Prohibition is withdrawn.

## Withdrawal

Occasionally, an agency will decide not to proceed with a proposed rulemaking. An agency may withdraw a proposed rulemaking at any time before submitting Second Notice, and notice of the withdrawal is published in the *Register*. After Second Notice begins, a rulemaking may only be withdrawn in response to a JCAR Objection.

An agency that decides not to adopt a proposed rule after completing the JCAR review process cannot withdraw the rule, but can allow the one-year adoption deadline to expire without adopting the rule.

## Emergency/Peremptory Rulemaking Process

Emergency and peremptory rules take effect immediately upon or shortly after being filed with the Secretary of State. JCAR reviews them only after they are effective. However, JCAR may take the following actions concerning these rules:

A **Recommendation** indicates that JCAR has concerns regarding the rule language, the process the agency followed in adopting the rule, or the agency's use of emergency or peremptory rulemaking. It does not affect the validity or enforcement of the rule.

An **Objection** to an emergency or peremptory rule indicates that JCAR finds the rule is not consistent with statute, has an adverse economic impact on small businesses, small municipalities, and non-profit organizations, or fails to meet some other standard established by the IAPA, or that the rulemaking process failed to meet the requirements of or the agency did not have sufficient reason to use emergency or peremptory rulemaking. An agency may modify an emergency or peremptory rule only in response to an Objection (in the case of an emergency rule, the modification lasts for the remainder of the 150 day life of the original rule or until the emergency rule is replaced by a permanent proposed rule with the modification). The agency must respond to the Objection within 90 days; the lack of a response is deemed to be a refusal to modify the rulemaking.

A **Suspension** of an emergency or peremptory rule, in conjunction with an Objection, stops the rule from being enforced based on JCAR's finding that the rule is contrary to the public interest, safety or welfare and/or that there is no legitimate reason for the agency to have used emergency or peremptory rulemaking. The rule cannot be enforced again until JCAR agrees to withdraw the Suspension, which may remain in effect up to 180 days. If not withdrawn by the end of that period, the Suspension becomes permanent.

## Structure of the Illinois Administrative Code

All rules that have been permanently adopted are incorporated into the Illinois Administrative Code, the State's body of administrative law.

The Code is divided into numbered Titles that indicate the general subject matter of each collection of rules (for example, Title 8 is Agriculture and Animals; Title 20, Corrections, Criminal Justice, and Law Enforcement; Title 50, Insurance; Title 89, Social Services; etc.).

Each Title is divided into Parts that address a specific program or subject. For example, Title 20, Part 504 (Discipline and Grievances) establishes the Department of Corrections' procedures for handling disciplinary matters and complaints from inmates in State prisons. Title 89, Part 120 (Medical Assistance Programs) contains the Department of Healthcare and Family Services' rules for determining an individual's eligibility for Medicaid or other State-funded medical assistance. These rules are usually referred to in the format of Title number, followed by "IAC" or "Ill. Adm. Code", followed by Part number (e.g., 89 Ill. Adm. Code 120). The Secretary of State maintains an Agency Index that lists each Part of each State agency.

Finally, each Part is divided into Sections that address specific aspects of the program or subject contained in the Part. Section numbers always include the Part number as a prefix – for example, 20 IAC 504.120 or 89 Ill. Adm. Code 120.308.

Every Part includes a Table of Contents listing each Section and its heading (it may also group Sections into Subparts); an Authority Note citing the State or federal statutes or the case law that the rules in the Part implement; and a Main Source Note indicating when the Part was originally adopted and citing all subsequent amendments to the Part. Main Source Notes include the *Register* citation and effective date for each adopted, emergency or peremptory rulemaking on that Part, as well as instances in which an emergency rule expired without being replaced by a permanent rule, was suspended by JCAR, or was withdrawn by the agency.

A Section Source Note can be found at the end of each Section, indicating when the Section was most recently amended or when it was added to the Part (e.g., Amended at 39 Ill. Reg. 14335, effective November 21, 2015). If a Section has no Source Note, it has not been amended since the Part was originally adopted.

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