

## Illinois Rulemaking Process

Rules of an administrative agency are valid and enforceable only after they have been through the rulemaking process through the Joint Committee on Administrative Rules (JCAR), a service agency of the General Assembly. Rules are for the purpose of interpreting or implementing provisions of a statute and should **not** actually expand or limit the scope of the statute. There are two types of Rulemakings for our purposes:

Proposed Rules. These can be new rules or amendatory rulemakings. A 2-step process (First and Second Notices) is followed, requiring 90-365 days. The agency controls the timing, aside from the basic 90 days. Both the general public and the General Assembly, through JCAR, can have input prior to adoption.

- Rule is drafted by State agency, with or without involvement of the public;
- First Notice period begins upon publication in the Illinois Register and lasts a minimum of 45 days and terminates when the agency files with JCAR, which then commences the Second Notice period. During the First Notice period, the DCEO will review proposed rulemaking, the general public can submit comment, and a public hearing may or may not be held. Requests for hearing must be filed within 14 days after publication of the First Notice.
- Second Notice begins once the agency files with JCAR and lasts for a maximum of 45 days unless extended for an additional 45 days by mutual agreement of JCAR and the agency. During this period, legislative review of the rule is conducted first by JCAR and then at a meeting of the legislative members. Modifications can be adopted through written JCAR Agreements.
- JCAR can then take several actions:
  - **Certificate of No Objection:** agency can proceed to adopt the rule by filing with SoS for publication in the Illinois Register.
  - **Recommendation:** (Issued along with a Certificate of No Objection) The agency should respond to the Recommendation in writing within 90 days and can modify or withdraw the rule in response to a JCAR Recommendation. (After going to Second Notice, the agency cannot unilaterally modify/withdraw a rulemaking.) However, the agency can also adopt the rules with no changes at any time after receipt of the Certificate of No Objection.
  - **Objection:** An agency has to respond to an Objection in writing within 90 days, but after responding can proceed to adopt. The agency can modify or withdraw in response to a JCAR Objection or adopt the rules without changes. JCAR Agreements still apply.
  - **Filing Prohibition/Suspension:** If JCAR determines that a rulemaking constitutes a threat to the public interest, safety or welfare, the members can, by a 3/5 (8 members) vote, prohibit filing of a proposed rulemaking (or suspend an emergency rule). As a result, the proposed rulemaking may not be accepted for filing by the Secretary of State or enforced by the agency. An emergency or peremptory rule, which has already been adopted, becomes null and void for a period of 180 days, after which, it is automatically repealed.

Emergency Rules. Emergency rules are effective immediately upon filing them with the SoS or within 10 days after filing. These rules can be developed unilaterally by the agency; JCAR reviews after the rules are adopted. An emergency rulemaking lasts 150 days unless an earlier date is specified or it's replaced by a permanent rulemaking. Emergency rulemaking can only be used if a threat to the public interest, safety or welfare exists that the rulemaking addresses.