**Section 100.440 Notice of Modification, Withdrawal, or Refusal to Modify or Withdraw a Rule**

a) When an agency elects to modify or withdraw, or refuses to modify or withdraw a proposed rule in response to the objections of JCAR, the agency shall submit a Notice of Modification, Withdrawal, or Refusal to Modify or Withdraw a Rule to be published in the Register (See 100.Appendix A, Illustration C). An agency may withdraw a proposed rulemaking (cease rulemaking activity on that proposal) without having a JCAR objection by publishing a Notice of Withdrawal of Proposed Rules in the Register. (See 100.Appendix A, Illustration B) Notice of Withdrawal of Proposed Rules (Amendments, Repealer), whether in response to a JCAR objection or not, shall be for the entire rulemaking proposed unless, pursuant to Section 100.410(d), the agency has divided the proposal into several rulemakings. If JCAR issues an objection on a proposed rule, amendment or repealer, the agency must respond to the objection directly to JCAR within 90 days of the receipt of the statement of objection. Failure to do so shall constitute withdrawal of the proposed rule, amendment or repealer and JCAR shall submit a notice to that effect in the next available issue of the Illinois Register. The agency response to JCAR's objection shall be published in the Register, preferably within the 90-day period as specified above.

b) If an agency response to a JCAR objection takes more than one type of action (that is, modifies and/or withdraws and/or refuses to modify or withdraw), the heading on the Notice shall state the actions taken:

1) If the agency is withdrawing one or more Sections or portions thereof and modifying one or more Sections or portions thereof, the action heading shall state "Notice of Withdrawal and Modification to Meet the Objections of the Joint Committee on Administrative Rules". It shall be noted, however, that withdrawal of one or more Sections in one particular rulemaking constitutes withdrawal of all Sections in that rulemaking. This Notice of Withdrawal and Modification may only be used when one entire rulemaking on a Part is being withdrawn and another entire rulemaking is being modified.

2) If the agency is withdrawing one or more Sections or portions thereof and refusing to modify or withdraw one or more Sections or portions thereof, the action heading shall state "Notice of Withdrawal and Refusal to Modify or Withdraw to Meet the Objections of the Joint Committee on Administrative Rules". (See also the information concerning withdrawal of rules in subsection (1) above.)

3) If the agency is modifying one or more Sections or portions thereof and refusing to modify or withdraw one or more Sections or portions thereof, the action heading shall state "Notice of Modification and Refusal to Modify or Withdraw to Meet the Objections of the Joint Committee on Administrative Rules".

4) If the agency is taking all three actions, the action heading shall state "Notice of Withdrawal, Modification, and Refusal to Modify or Withdraw to Meet the Objections of the Joint Committee on Administrative Rules". (Also refer to the information concerning withdrawal in subsection (1) above.)

c) On the Notice of Withdrawal (Modification, Refusal to Modify or Withdraw) to Meet the Objections of the Joint Committee on Administrative Rules, the agency shall, under "Action," state the specific action being taken in response to the objection, i.e. withdrawal, modification or refusal to modify or withdraw. (See 100.Appendix A, Illustration C.)

d) An agency may withdraw a proposed rule without a JCAR objection by publishing a Notice of Withdrawal of Proposed Rules, Amendments or Repealer. (See 100.Appendix A, Illustration B.)

e) Publication of a Notice of Withdrawal of Proposed Rules, Amendments, or Repealer constitutes withdrawal of the entire rulemaking. However, if the agency has split the action on a Part into several rulemakings pursuant to Section 100.410(d), the agency may elect to withdraw only one of the rulemakings, but that rulemaking shall be withdrawn in its entirety. This Notice is to be used only when withdrawing rulemakings prior to and instead of submitting the rulemaking to JCAR for second notice.

f) An agency which decides to withdraw one or more Sections from a proposed rulemaking due to comments received during the first notice period shall not publish a Notice of Withdrawal of Proposed Rules, Amendments or Repealer) in the Illinois Register unless the Sections being withdrawn constitute the entire rulemaking. Rather, when submitting the proposed rulemaking to JCAR for second notice, the agency shall specify this withdrawal as a change made to the proposed rulemaking during the first notice period.

g) If an agency wishes to withdraw one or more Sections of a proposed rulemaking due to agreements made between the agency and JCAR during the second notice period, the agency shall not publish a separate Notice of Withdrawal of Proposed Rules, Amendments or Repealer unless the withdrawal involves the entire rulemaking. Rather, the Sections being withdrawn shall be listed on the Notice of Adopted Rules, Amendments or Repealer as changes between proposal and adoption.

(Source: Amended at 17 Ill. Reg. 10414, effective July 1, 1993)