

ILLINOIS POLLUTION CONTROL BOARD
March 2, 2023

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R18-28
SUBTITLE I: ATOMIC RADIATION) (Rulemaking – Atomic Radiation)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (By J. Van Wie):

On April 21, 2022, the Board proceeded to first notice in this rulemaking docket after proposing the rules for public comment and holding two hearings. *See, Amendments to 35 Ill. Adm. Code Subtitle I: Atomic Radiation, R18-28 (Apr. 21, 2022).* Today the Board submits a proposal to the Joint Committee on Administrative Rules (JCAR) for second-notice review. *See 5 ILCS 100/5-40(c) (2020).*

In this opinion and order, the Board first provides background on the objectives of this rulemaking and its procedural history since the first-notice proposal. Next, the Board discusses Part-by-Part revisions to its first-notice proposal. The Board then addresses the technical feasibility and economic reasonableness of this proposal before concluding to submit amended rules for second-notice review. Finally, the Board directs the Clerk to submit its proposal to JCAR. The proposed amendments appear in the addendum to this opinion and order.

BACKGROUND

In 2016, the Board began reviewing its rules to identify obsolete, unclear, or otherwise unnecessary language. On January 10, 2018, the Illinois Environmental Protection Agency (IEPA or Agency) filed a proposal to amend numerous Board rules, including Part 1000 of the Board’s atomic radiation regulations. Clean-Up Amendments to 35 Ill. Adm. Code Parts 201, 211, 212, 214, 215, 216, 217, 218, 219, 225, 228, 232, 237, 301, 302, 303, 304, 306, 309, 401, 402, 403, 404, 405, 501, 611, 615, 616, 617, 722, 811, 813, 855, and 1000, R18-21 (Jan. 10, 2018). IEPA’s proposal cited Executive Order 2016-13, which required agencies to review existing regulations to identify provisions that are outdated, repetitive, confusing, or unnecessary and then revise or repeal them as appropriate.

The Board’s first-notice proposal included non-substantive amendments proposed by the Board and by the Illinois Environmental Protection Agency (IEPA). Both IEPA and the Board intend the proposed amendments to be non-substantive in nature.

PROCEDURAL HISTORY

On March 22, 2018, the Board opened this docket to make non-substantive, clarifying amendments to its atomic radiation rules (35 Ill. Adm. Code 1000, 1010). For the Board’s

procedural history before first notice, please see the Board’s first notice opinion and order, Amendments to 35 Ill. Adm. Code Subtitle I: Atomic Radiation, R18-28 (Apr. 21, 2022).

After adopting a proposal for public comment, holding hearings, and receiving comments, the Board on April 21, 2022 adopted a first-notice opinion and order. *See*, R18-28 (Apr. 21, 2022). The proposed amendments were published in the *Illinois Register* on May 6, 2022. 46 Ill. Reg. 6867, 6896 (May 6, 2022).

On May 20, 2022, JCAR filed comments on the Board’s first-notice proposal for Part 1000 (PC 1). On June 9, 2022, the Illinois Emergency Management Agency (IEMA) filed comments (PC 2). On June 21, 2022, JCAR filed comments on the Board’s first-notice proposal for Part 1010 (PC 3). On July 22, 2022, the Board responded to JCAR’s comments on Part 1000 (PC 4) and Part 1010 (PC 5).

SUMMARY OF PROPOSED SECOND-NOTICE AMENDMENTS

In the following subsections, the Board first provides an overview of Subtitle I. Next, the Board addresses its first-notice amendments, requests for comments from IEPA and IEMA, and IEMA’s select responses. Finally, the Board addresses suggested changes to its first-notice proposal Part-by-Part, starting by considering general revisions proposed by JCAR in PC 1 and 3. The Board concludes by addressing specific revisions.

Overview

Subtitle I of the Board’s regulations addresses atomic radiation. Part 1000 establishes “standards for protection against certain radiological air pollutants associated with materials and activities under licenses issued by the United States Nuclear Regulatory Commission.” 35 Ill. Adm. Code 1000.102(a). Part 1010 “prescribes standards for detecting and reporting unpermitted releases of radionuclides from nuclear power plants.” 35 Ill. Adm. Code 1010.100. These rules also include definitions and requirements for record submittals and incident notifications. *See* 35 Ill. Adm. Code 1000, 1010.

First-Notice Amendments and Requests for Comments

The Board’s first-notice proposal included non-substantive amendments originally proposed both by the Board and the IEPA. The first-notice opinion includes a section-by-section discussion of the proposed amendments. For example, the Board proposed putting all “incorporations by reference” in one section, consistent with Board practice. The amendments also change citations and regulatory language to comply with the style requirements of the Illinois Administrative Code. Additionally, the Board asked IEPA and IEMA for clarifying information on certain issues. Rather than reproduce it here, the Board directs individuals to its first-notice opinion and order on the Board’s website (pcb.illinois.gov) under this docket number, R18-28. *See* Amendments to 35 Ill. Adm. Code Subtitle I: Atomic Radiation, R18-28 (Apr. 21, 2022).

IEMA provided clarifying comments in response to the Board's first-notice requests on certain issues. *See* PC 2. JCAR separately submitted comments on each of Parts 1000 and 1010, proposing additional clarifying changes to each Part. *See* PC 1, PC 3.

Updating Citations to the Code of Federal Regulations in Proposed Section 1000.202 Incorporations by Reference

At first notice, the Board asked IEPA and IEMA to comment on whether the citations to the Code of Federal Regulations (CFR) in proposed Section 1000.202, Incorporations by Reference, should be updated to reflect more current versions of those federal rules, and, if so, to provide citations to those federal rules. The Board also asked IEPA and IEMA to identify which of those updated citations, if any, might be a substantive change. R18-28, slip op. at 7. Neither IEPA nor IEMA responded to the Board's request. Since the Board did not receive input from either agency, the Board maintains its first-notice position that updating the citation dates might be a substantive change outside the scope of this rulemaking and declines to make that change.

Updating IEMA Phone Number for Section 1000.502 Notifications

In its first-notice opinion and order, the Board asked IEMA to confirm the accuracy of the telephone numbers provided by IEMA in the proposed amendment to Section 1000.502. R18-28, slip. op. at 7. IEMA recommends changing the correct telephone number for contacting IEMA in this section to “~~(217)782-7860. 1-800-782-7860, or, if calling from outside Illinois, 1-217-782-7860.~~” PC 2 at 1. The Board accepts IEMA's recommendation and revises the telephone number for this second-notice proposal.

Updating IEMA Contact Information for Section 1010.204 Follow-Up Reports

Also at first notice, the Board asked IEMA to provide its correct mailing address for proposed Section 1010.204(b). The Board sought this update to IEMA's contact information because that information could be outdated following the proposed changes to Section 1000.502. R18-28, slip op. at 7. IEMA recommended that “Bureau of Environmental Safety” should be stricken from its mailing address in Section 1010.204(b). PC 2 at 2. The Board accepts IEMA's recommendation and includes this change in its second-notice proposal.

Part 1000

General Revisions Suggested by JCAR

In Part 1000, JCAR suggested 72 changes to the Board's first-notice proposal. *See* PC 1. In many cases, JCAR suggested non-substantive changes that, for example, simplify or clarify language or correct punctuation. The Board accepts these suggestions and includes them in its second-notice proposal. When reviewing JCAR's suggestions, the Board made a small number of conforming changes and additional clarifying changes consistent with those in its first-notice proposal and JCAR's suggestions. *See* PC 4. For instance, the Board made additional changes to further clarify language, as well as to update citations to be consistent with Section 1000.202,

Incorporations by Reference. *See* PC 4. The Board does not provide additional discussion of these changes in this opinion.

In a small number of cases, the Board respectfully declines JCAR's suggested changes to its first-notice proposal. In some of these cases, the Board was not persuaded that the suggested change genuinely clarified the rule. In others, the Board was concerned that the proposed suggestions may have an unintended substantive effect, such as changing the legal or actual meaning of the rule language, or where a proposed change would be inconsistent with the corresponding federal rule. *See*, PC 4 at 3. The Board explains its reason for declining suggestions in this non-substantive rulemaking in its response filed as PC 4.

Section 1000.102

In Section 1000.102, Purpose, JCAR's first-notice comment proposed to strike the following from the first sentence of subpart (b):

- (b) Persons subject to this Part ~~must comply with this Part~~ and make every effort to maintain radiation exposures in, and releases of radioactive materials to, unrestricted areas as low as is reasonably achievable.

PC 3 at 1.

The Board agrees but believes additional changes must be made to clarify this sentence. At first notice, the term "reasonable" was stricken from the text, but the Board has determined that the term "reasonable" should be reinstated. The Board finds that striking "reasonable" could be viewed as a substantive change beyond this rulemaking's scope. Accordingly, the Board proposes to modify the first sentence of subsection (b) for second notice as follows:

- (b) ~~Persons subject to this Part~~In addition to complying with the other applicable requirements of this Part, persons subject to this Part must~~must comply with this Part~~ and make every reasonable effort to maintain radiation exposures in, and releases of radioactive materials to, unrestricted areas as low as is reasonably achievable.

See PC 4 at 1.

Also in Section 1000.102, JCAR proposed to replace "the lowest radiation" in the second sentence of subpart (b) with the following definition and to strike the remainder of the definition of the term "as low as is reasonably achievable" as follows:

The term "as low as is reasonably achievable" means ~~the lowest radiation~~ making every reasonable effort to maintain exposures to radiation as far below the dose limits in this part as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and

~~in relation to utilization of nuclear energy and licensed materials in the public interest (10 CFR 20.1003 (2022)). exposure levels achievable considering the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of atomic energy in the public interest.~~

See PC 4 at 1-2.

The Board agrees to delete “the lowest radiation”, but disagrees with adding the definition of “ALARA” (“as low as is reasonably achievable”) from 10 CFR § 20.1003 as suggested by JCAR. That definition differs from the current rule in ways that could be considered substantive and therefore beyond this rulemaking’s scope. *Id.* For example, the Board’s existing text refers to “unrestricted areas”; is not limited by “dose limits”; and parallels the ALARA definition from 10 CFR § 50.34a(a), which is associated with 10 CFR 50, Appendix I as referenced in new subsection (c) of Section 1000.102. *Id.* at 2. The Board declines to change the definition in this non-substantive rulemaking but is willing to consider it when Part 1000 is next opened for substantive review. *Id.*

The Board also agrees to delete “exposure levels”, but declines to strike “achievable” or to delete “considering”. *Id.* The Board also proposes to reinstate the phrase “as low as is reasonably”, as striking it could be viewed as a substantive change beyond this rulemaking’s scope. *Id.*

For second-notice review, the Board proposes to modify the second sentence of Section 1000.102(b) as follows:

The term "as low as is reasonably achievable" means ~~the lowest radiation exposure levels~~ achievable considering the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of atomic energy in the public interest.

See PC 4 at 1-2.

Section 1000.201

In the introductory paragraph of Section 1000.201, Definitions, the Board at second notice changes the phrase “will be” to the present-tense “are” for clarity and consistency.

Regarding the existing Section 1000.201 definition for “Department,” IEMA recommended striking it from Part 1000. PC 2 at 1. IEMA proposed replacing it with the following term and definition: “‘IEMA’ means the Illinois Emergency Management Agency, Division of Nuclear Safety.” PC 2 at 1. IEMA further proposed that any references to the “Department” within the rule should be replaced with “IEMA”. *Id.*

The Board defers to IEMA and agrees to strike the term “Department” and its definition from Section 1000.202, to add the term “IEMA” and the proposed definition to Section

1000.202, and to replace all references to “Department” in Part 1000 with “IEMA”. The Board notes that the new definition for “IEMA” will appear after the definition for “Dose” and before the definition for “Individual” to keep the definitions in Section 1000.202 in alphabetical order, consistent with Board policy.

The Board notes that the Governor’s Executive Order of February 17, 2023 established a new name for the IEMA. Executive Order 2023-03 (Feb. 17, 2023). If the proposed references to IEMA in this rulemaking should be updated accordingly, the Board requests JCAR’s input on any necessary corrections.

Section 1000.402

Definition of “Member of the public”. In Section 1000.402, Definitions, the Board in its first-notice proposal replaced the term “individual” and related language in the definition of “Member of the public” as follows:

“Member of the public” means any person ~~individual~~ that can receive a radiation dose in the general environment, whether the person may or may not also be exposed to radiation in an occupation associated with a nuclear fuel cycle. However, a person ~~an individual~~ is not considered a member of the public during any period in which that person ~~he~~ is engaged in carrying out any operation which is part of a nuclear fuel cycle. First Notice at 14.

In its first-notice comment, JCAR proposed striking replacing “that” with “who” in the first line of this definition. The Board agrees and includes the proposed revision in this second-notice proposal. JCAR proposed corresponding clarifying grammatical changes, with which the Board agrees and includes in this second-notice proposal.

Upon further review, the Board finds it necessary to strike “person” and reinstate “individual”, to strike “a person” and reinstate “an individual”, and to replace “that person” with “that individual”. Given the Environmental Protection Act’s broad definition of “person”, “individual” is a more precise term for this definition of “member of the public.” PC 4 at 4. The term “individual” is also consistent with the USEPA’s definition of “member of the public”.¹ For second-notice review, the Board modifies the definition of “Member of the public” as follows:

“Member of the public” means any individual ~~that~~ who can receive a radiation dose in the general environment, whether or not the individual ~~may or may not is also be~~ exposed to radiation in an occupation associated with a nuclear fuel cycle. However, an individual is not considered a member of the public during any period in which that individual ~~he~~ is engaged in carrying out any operation which is part of a nuclear fuel cycle.

Definition of “Nuclear fuel cycle”. In Section 1000.402, Definitions, the Board in its first-notice proposal removed the phrase “defined to be” from the definition of “Nuclear fuel

¹ See, 40 CFR § 190.02(k).

cycle”. R18-28, slip op. at 15. In its first-notice comment, JCAR proposed adding “uranium” after “any” and before “fuel cycle”, and changing “through utilization of” to “using”.

The Board declines to make JCAR’s proposed changes. Adding “uranium” could be viewed as a substantive change outside the scope of this rulemaking. PC 4 at 5. The rule’s existing definition of “nuclear fuel cycle” is consistent with the USEPA’s definition of “nuclear fuel cycle”.² *Id.* The term “utilization” is also used in the federal rule language. *Id.*; *see also*, 40 CFR § 190.02(a). To remain consistent with the USEPA definition of “nuclear fuel cycle”, the Board reinstates “defined to be” to revert the rule text to its original language.

Part 1010

General Revisions Suggested by JCAR

In Part 1010, JCAR suggested 30 changes to the Board’s first-notice proposal. *See* PC 3. In many cases, JCAR suggested non-substantive changes that, for example, simplify or clarify language, update citation formatting, or correct punctuation. The Board accepts these suggestions and includes them in its second-notice proposal. When reviewing JCAR’s suggestions, the Board made a small number of conforming changes and additional clarifying changes consistent with those in its first-notice proposal and JCAR’s suggestions. *See* PC 5. The Board does not provide additional discussion of these changes in this opinion.

In a small number of cases, the Board respectfully declines JCAR’s suggested changes to its first-notice proposal. In some of these cases, the Board was not persuaded that the suggested change genuinely clarified the rule. In others, the Board wished not to propose suggestions that may have an unintended substantive effect, such as changing the legal meaning or requirement of the rule. The Board also declines JCAR’s suggested changes that would delete specific citations or definitions used in Part 1010. The Board explains its reason for declining suggestions in its response filed as PC 5.

Section 1010.106

In the introductory paragraph of Section 1010.106, Definitions, the Board at second notice changes “shall” to “will” consistent with its changes to reduce legalese.

Section 1010.202

In Section 1010.202, Reporting of Releases, JCAR suggested adding actual addresses for submitting reports to the IEPA and IEMA to subsection (a)(3). PC 5. The Board declines to do so, noting that the addresses are not in this rulemaking record but would presumably be provided through the electronic report form required by subsection (a)(3). *See* PC 5.

Also in Section 1010.202, JCAR questioned the subsection (b)(2) requirement of signatures as they pertain to the telephonic reporting required by Section 1010.202, and

² *See*, 40 CFR § 190.02(a).

suggested striking “signature” from the text of the subsection. PC 3 at 2. To avoid substantively changing the reporting requirements of this Section, the Board disagrees with striking “signature”. However, to avoid any ambiguity, the Board agrees to modify Section 1010.202(b)(2) for second notice as follows:

- 2) The name, signature (in electronic reports), and telephone number of the Principal Executive Officer for the nuclear power plant or the Principal Executive Officer's authorized agent.

See PC 5 at 2.

Section 1010.204

In Section 1010.204, Follow-Up Written Report, JCAR questioned why hard copies of the reports are still necessary. *See* PC 3 at 3. The Board responded that IEPA’s and IEMA’s reasons for hard copies were not addressed in this rulemaking record. PC 5 at 3. As IEPA’s and IEMA’s reasons for the requirement are outside the scope of this rulemaking, the Board declines to question or change the requirement.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

As described in the Board’s first-notice opinion and order, on September 17, 2021, the Board requested that DCEO perform an economic impact study of the Board’s proposal. *See* 415 ILCS 5/27(b) (2020). In a letter dated October 22, 2021, DCEO respectfully declined the Board’s request to perform a study. No participant at either hearing testified or commented on the Board’s request or DCEO’s response.

In this proceeding, the Board intends to identify provisions that are outdated, repetitive, confusing, or unnecessary and then propose only non-substantive amendments to clarify its rules. When it adopted its first-notice proposal, the Board carefully considered the record, particularly IEPA’s comments on the Board’s proposal for public comment and IEPA’s post-hearing comments. R18-28, slip op. at 6-7. Based on the record then before it, the Board concluded that the first-notice proposal did not make substantive revisions that affect complying with existing rules. The Board found that its first-notice proposal was both technically feasible and economically reasonable. *See* 415 ILCS 5/27(a) (2020). The Board further found that its proposed non-substantive amendments would not have any adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(b) (2020).

Since the Board made those findings and adopted its first-notice proposal, no addition to the record has altered those conclusions. Based on its review of the record now before it, the Board concludes that its second-notice proposal is both technically feasible and economically reasonable. The Board also again finds that these proposed non-substantive amendments would not have any adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(b) (2020).

CONCLUSION

The Board concludes to propose non-substantive amendments to its atomic radiation rules for second-notice review by JCAR. The proposed amendments appear in the addendum to this opinion.

ORDER

The Board directs the Clerk to submit the proposed amendments to its Subtitle I atomic radiation rules that appear in the addendum to this opinion to JCAR for second-notice review.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 2, 2023 by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board