

Guide to Rule-Making

This guide is required by Ohio Revised Code 119.0311 and has been updated to reflect Executive Order 2011-01K (EO 2011-01K) and Senate Bill 2 (SB2) of the 129th General Assembly. This guide is intended to help members of the public who participate, or may wish to participate, in the rule-making process of the Ohio Environmental Protection Agency (Ohio EPA).

Upon taking office on January 10, 2011, Governor Kasich issued Executive Order 2011-01K, "Establishing the Common Sense Initiative." According to Lt. Governor Mary Taylor, the Common Sense Initiative was created "to cut through the red tape and eliminate burdensome, costly and duplicative rules and regulations so that businesses and entrepreneurs can more easily put their job-creating ideas into action and help revive Ohio's economy." According to its Strategic Plan, the Common Sense Initiative Office (CSIO) will be guided by the following principles: regulations should facilitate, not hinder, economic growth, regulations should be transparent and responsive, compliance should be as easy and inexpensive as possible and regulations should be enforced fairly and consistently.

Subsequent to the issuance of the Executive Order, the Ohio Legislature enacted Amended Substitute Senate Bill 2 (SB2). SB2 more broadly seeks to identify and limit adverse impacts on businesses regardless of size. Although SB2 itself was effective beginning June 7, 2011, many provisions will not be effective until January 1, 2012.

SB2 codifies the creation of the CSIO, alters the procedure for promulgation of agency rules, and expands the jurisdiction of Joint Committee on Agency Rule Review (JCARR). Under SB2, a rule that might have an adverse impact on business is subject to additional analysis by the agency proposing it, the CSIO and JCARR.

The objectives of these new requirements can only be achieved when the process by which regulations are enacted is transparent and accessible to persons outside of government and when those regulations are crafted so they are easy to understand by those affected.

Rule-making Requirements and Authorization

The Ohio Revised Code (ORC) requires and authorizes Ohio EPA to adopt administrative rules. Rules are adopted pursuant to Chapter 119 and section 111.15 of the ORC, which become part of the Ohio Administrative Code (OAC). The Agency may also adopt internal management rules.

Ohio EPA's Mission

To protect the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship.

Ohio EPA's Vision

The Ohio Environmental Protection Agency is a trusted leader and environmental steward using innovation, quality service and public involvement to ensure a safe and healthy environment for all Ohioans.

Agency Organization

Ohio EPA has six major program divisions that implement Ohio's environmental regulations.

Division of Air Pollution Control
(614) 644-2270 | www.epa.ohio.gov/dapc/

Division of Drinking and Ground Waters
(614) 644-2752 | www.epa.ohio.gov/ddagw/

Division of Environmental Response and Revitalization
(614) 644-2924 | www.epa.ohio.gov/derr/

Division of Environmental and Financial Assistance
(614) 644-2798 | www.epa.ohio.gov/defa/

Division of Materials and Waste Management
(614) 644-2621 | www.epa.ohio.gov/dmwm/

Division of Surface Water
(614) 644-2001 | www.epa.ohio.gov/dsw/

What is a rule?

A rule is a regulation or standard, having a general and uniform operation, which is adopted, promulgated and enforced by any agency under the authority of the laws governing such agency.

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Rule-making Process

The rule-making process may be lengthy and complex, but in general, there are standard steps involved in the adoption of rules at Ohio EPA.

Drafting, Review, and Stakeholder Outreach

The first step in the rule-making process is for Ohio EPA to identify that a rule needs to be amended, rescinded, or created. There are many different reasons to change a rule, some include a quick change, (e.g., incorrect rule reference), a limited rule change (e.g., difficulties with interpretation or application), a full ORC 119.032 review (five-year review) and changes to state or federal law.

In response to EO 2011-01K, Ohio EPA has added an additional step to ensure stakeholders are brought into the rule process as early as possible. This additional interested party notification and request for information will allow for early feedback before the rule language has been developed by the Agency. The notifications may be different for the type of rule changes necessary.

- For quick changes and limited rule changes – The notification will identify the rule and the problem, contain a link to the current rule and provide information on how to comment.
- For full ORC 119.032 reviews – The notification will identify the rule, link to the current rule, and provide information on how to comment. If problems with the current rule or concepts on how the rule will be changed have already been identified by Ohio EPA, these may be included in the notification. If the intent is to file the rules as no-change, then this will be identified in the notification.
- For changes to state or federal laws – The notification will identify the rule, include the federal or state law that is creating the need for the rule change, link to the current rule and provide information on how to comment.
- For other changes not covered by one of the above scenarios - Ohio EPA will provide the best information necessary to allow the stakeholders to comment on the rule.

This notification is not considered an action of the director and would not be public noticed. This is considered an early courtesy to those interested parties that have already signed up to receive rule notifications. The notifications will include a deadline for submitting comments and will ask the commenters for feedback to assist the divisions in filling out the Business Impact Analysis required by the CSI process.

If any comments are received, Ohio EPA will consider those comments when drafting the rule changes. Ohio EPA will not create an official response to comments for these comments.

If Ohio EPA feels additional outreach with stakeholders is necessary, the Agency may hold

stakeholder meetings, send out additional questions to stakeholders or create external advisory groups. This process does not suggest that Ohio EPA is required to send out drafts or negotiate rule language with stakeholders.

Interested Party Review

The interested party review process is designed to allow interested parties, stakeholders or citizens to make comments regarding the rule prior to adoption.

Ohio EPA conducts the interested party review prior to filing the proposed rule with JCARR.

JCARR's primary function is to review rules in accordance with Ohio's laws. JCARR, part of the Ohio Legislature, consists of five State Representatives and five State Senators.

Once the draft rule is completed, it is posted on Ohio EPA's website along with the completed Business Impact Analysis. Interested parties are notified that the draft is available for review. A deadline for submitting comments is set by Ohio EPA. This timeframe is normally 30 days but may be lengthened or shortened as needed.

Interested parties may register to receive notification through the State of Ohio's Rules E-Notification System at www.business.ohio.gov/reform/ or through Ohio EPA's listservs at www.epa.ohio.gov/Rules_and_Laws.aspx.

Once registered, individuals will receive notices and communications regarding the creation, amendment, rescission or continuation without change of any rule.



Consider Interested Party Comments

Ohio EPA collects, reviews, and considers each relevant comment, concern or question received during the draft review period.

Based on the comments received, Ohio EPA may revise the draft rule as appropriate. The time needed to review and incorporate the comments received varies depending on the complexity of the comments.

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Submission of the Business Impact Analysis

Ohio EPA is required to send this analysis to the CSIO. CSIO has two options for the Business Impact Analysis:

1. Prepare and send recommendations to Ohio EPA for eliminating or reducing adverse impacts.
2. Allow 16 days to pass without preparing and sending recommendations.

If recommendation is received from the CSIO, Ohio EPA will respond to the recommendations and work with the CSIO to resolve the issues.

If 16 days pass, the rules can be original filed with JCARR.

Propose Rules to JCARR

When the draft rule is complete, it is filed with JCARR, the Secretary of State and the Legislative Service Commission (LSC).

The Secretary of State maintains copy of the proposed rule. LSC reviews the proposed rule to ensure that it is properly formatted and codified.

When the rule has been filed with JCARR, it is called a "proposed rule." Ohio EPA submits a Rule Summary and Fiscal Analysis (RSFA), Environmental Amendment/Adoption Form and the Business Impact Analysis with the proposed rule. These forms answer many questions regarding the content of the proposed rule, the legal basis for the rule, the environmental justification, the adverse impacts to business, the estimated budgetary effect of the proposed rule and the estimated cost of compliance by all directly affected persons.

The proposal to JCARR starts the 65-day JCARR jurisdiction. Within the first 31 to 40 days of that jurisdiction, Ohio EPA will hold a public hearing to provide an opportunity for anyone to provide oral testimony on the rule.

Public Notice, Comment Period and Hearing

When the rule is proposed, Ohio EPA public notices the proposal and begins the formal public comment period. The public comment period usually ends on the day of the public hearing. Ohio EPA conducts public hearings for all new, amended and rescinded rules.

A public hearing is the public's opportunity to provide oral testimony for the record. Those who choose not to provide oral testimony are encouraged to submit their comments in writing. Ohio EPA considers all relevant comments when deciding whether to adopt, amend or rescind a rule.

Public hearing notices are posted in Ohio EPA's *Weekly Review*, on the Register of Ohio's website (www.registerofohio.state.oh.us) and Ohio EPA's website at www.epa.ohio.gov/pic/meetings.aspx.

Consider Public Comments

Written and oral comments received during the public comment period receive the same consideration. Ohio EPA carefully reviews all submitted comments and may revise the proposed rule as appropriate.

JCARR Hearing and Jurisdiction

JCARR has 65 days to review the rule to ensure:

- the rules do not exceed the scope of the rule-making agency's statutory authority;
- the rules do not conflict with another rule of that agency or another rule-making agency;
- the rules do not conflict with the intent of the legislature in enacting the statute under which the rule is proposed;
- the rule-making agency has prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment or rescission (ORC 127.18) and, if the agency has incorporated text or other material by reference, the agency has met the standards stated in ORC sections 121.72, 121.75 or 121.76; and,
- the rule-making agency has demonstrated, through the business impact analysis, CSIO recommendations, and Memorandum of Response, that the regulatory intent justifies the adverse impact on business.

Within the last 41 to 65 days of JCARR jurisdiction, JCARR holds a hearing to accept comments on the proposed rule. Based on the comments received, JCARR may take action to stop the adoption of the rule for the duration of that general assembly.

Finalize the Rule

Following the 65-day JCARR jurisdiction, the director of Ohio EPA adopts the rule and establishes the date the rule becomes effective. Once the rule is adopted, it is subject to appeal. The adoption of the final rule is public noticed in the Register of Ohio at www.registerofohio.state.oh.us and in Ohio EPA's *Weekly Review*.

Emergency Rules

In extraordinary circumstances, Ohio EPA may bypass most of this procedure and adopt emergency rules. This requires an order of the governor finding that an emergency exists and suspending the normal procedural requirements of ORC Chapter 119. Emergency rules are not subject to EO 2011-01K or SB2. Emergency rules automatically expire after 90 days, unless, in the interim, the Agency has gone through the normal Chapter 119 rule-making procedure.

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Public Involvement

There are many opportunities for the public to participate in the rule-making process. Some of the simplest, and most effective ways, are described here.

- Sign up for the interested party list to receive notification of rule-making activities. To sign up, go to www.epa.ohio.gov/Rules_and_Laws.aspx.
- Sign up for the State of Ohio's Rules E-Notification System at www.business.ohio.gov/reform/. Once registered, you will be notified electronically about agency rule actions. The Rules E-Notification System notifies interested parties and allows comment feedback during the executive order review of rules for selected state agencies. This notification and comment feedback period will be conducted in concert with Ohio EPA's established interested party review period.
- Review and comment on draft rules.
- Review the rule proposal and public hearing notices.
- Attend Ohio EPA and JCARR public hearings.

Resources

- Joint Committee on Agency Rule Review
www.jcarr.state.oh.us
- E-Notification System
www.business.ohio.gov/reform
- Ohio EPA Rules and Laws
www.epa.ohio.gov/Rules_and_Laws.aspx
- Register of Ohio
www.registerofohio.state.oh.us
- Common Sense Initiative Office
www.governor.ohio.gov/PrioritiesandInitiatives/CommonSenseInitiative.aspx



Who to contact:

If you have a question regarding the rule-making process, please contact Ohio EPA's rules coordinator at (614) 644-2782. If your question concerns a particular rule or technical requirement, please contact the appropriate division listed on the front of this fact sheet.