



Department of  
Agriculture

# **The Rule-Making Process**

**A Guide to the Rule-Making Process  
Of The Ohio Department Of Agriculture**

**January 2010**

## **EXECUTIVE ORDER 2008-04S**

In Executive Order 2008-04S, Governor Strickland required that regulations create an atmosphere in which business and individuals affected by those regulations are treated as partners in identifying and achieving regulatory goals. Accessibility, flexibility, respect, timely responsiveness, problem solving, and continuous improvement must be the hallmarks of Ohio's approach to regulatory activity. These objectives 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.

This guide is required by Ohio Revised Code 119.0311 and has been updated to reflect Executive Order 2008-04S. The guide is intended to assist members of the public who participate, or may wish to participate, in the rule-making process of the Department of Agriculture.

### **REGULATORY MISSION**

Ohio's Department of Agriculture has regulatory responsibility in four broad areas:

1. Ensuring the safety and wholesomeness of food and food products from production through processing and distribution to the consumer;
2. Ensuring that the goods and services purchased by farmers meet the standards established by law;
3. Ensuring the safe storage, handling and application of agricultural chemicals that can adversely affect the environment; and
4. Control and eradicate plants and animal diseases that pose a threat to human health and the economic viability of agriculture.

In addition to the foregoing, the Department of Agriculture is responsible for regulating the sealing of weighing and measuring devices used in Ohio, inspection of amusement rides and carnival games, licensing and regulation of auctioneers, the monitoring and eradication of animal diseases in Ohio livestock, and overseeing the establishment and operation of agriculture commodity marketing and promotion programs.

### **Department Organization**

The Department has nine divisions which are directly responsible for the development and enforcement of administrative rules applicable to their areas of responsibility. These divisions and their primary areas of responsibility are:

#### **1. Division of Animal Industry**

This division is responsible for the enforcement of rules governing the importation and intra-state movement of animals, and the eradication and control of animal diseases. The division also oversees the licensing and regulation of livestock dealers and renderers.

## **2. Dairy Division**

The processing of raw milk into Grade A milk and milk products such as cheese and ice cream is regulated by this division.

## **3. Division of Food Safety**

The inspection of food products, other than meat, poultry, and milk products, from processing through retail sale is carried out by this division. Inspection helps ensure that food products sold in Ohio are safe and wholesome and comply with labeling laws.

## **4. Division of Meat Inspection**

The processing of meat and poultry for food and food products is regulated by this division.

## **5. Division of Plant Industry**

This division is divided into five sections; Apiary, Pesticides, Plant Pest Control, Feed and Fertilizer and Grain Warehouse.

Collectively the first four sections are responsible for the accurate labeling of feeds, fertilizers, pesticides, and nursery stock being offered for sale. They are also responsible for the safe application, storage and handling of pesticides and fertilizers and the control and prevention of pests and diseases affecting both bees and plants. The division's Grain Warehouse section licenses and audits agricultural commodity dealers for financial integrity.

## **6. Division of Ride Safety**

Amusement rides and carnival games are licensed and inspected by this division.

## **7. Division of Weights and Measures**

All weighing and measuring devices used in commercial transactions in Ohio are inspected and tested for compliance with accuracy standards established by rule.

## **8. Division of Markets**

This division oversees the implementation and operation of agricultural commodity marketing programs adopted by farmers. It also manages the Ohio Proud marketing program.

## **9. Enforcement Division**

This division conducts investigations on behalf of the Department's other eight

divisions as well as for the Ohio Veterinary Board. This division also oversees the licensing and enforcement of all licensed auctioneers and apprentice auctioneers in Ohio.

## **Rule-Making Authority**

The Ohio Revised Code requires and authorizes the Department to adopt administrative rules. Rules are adopted pursuant to Chapter 119, and section 111.15 of the Ohio Revised Code, and become part of the Ohio Administrative Code. The Department may also adopt internal management rules.

## **Steps in the Rule Making Process and Public Participation**

### **Origin Of Rules**

Rules are adopted by the Department either because they are required by newly enacted legislation or because existing rules, due to fundamental changes in a regulated subject area, no longer effectively implement the intent of the underlying legislation. In the latter case a proposal for rule changes may originate in a division or may come from an interested group outside the Department.

### **Rule Drafting and Electronic Notification to Interested Parties**

Initially rules are drafted by the division responsible for their enforcement. At this stage the Department has input from a number of different committees, created either by statute or ad hoc, trade associations and public interest groups that are representative of the different interest of people most directly affected by the rules.

Interested parties may register on a centralized electronic system at the Ohio Business Gateway ([www.business.ohio.gov/reform](http://www.business.ohio.gov/reform)) to receive notices and communications regarding the proposed development, amendment, rescission or continuation as “no change” of any rule of interest to them. Interested parties may then submit comments through the Ohio Business Gateway.

The division will review any comments submitted by interested parties. The division will consider each comment, concern or question regarding the draft rule raised during the interested party review and may revise the draft rule as appropriate.

### **Review and Filing**

When completed, a draft of the rules is sent to the Department’s legal section for review. If the rules are in accordance with law and formatted properly they are proposed for adoption and filed with the Joint Committee for Agency Rule Review (JCARR), the Legislative Service Commission, the Secretary of State and the Department of Development’s Office of Small Business.

At the same time the rules are proposed for adoption and filed, a Common Sense Business Regulation checklist will be completed as required by Executive Order 2008-04S. The executive order calls for a top to bottom review of current rules, eliminating those that are unnecessary or needlessly burdensome while establishing regulatory performance standards that will make Ohio a more competitive place to do business.

### **Notice and Agency Public Hearing**

At the time the rules are filed a public hearing is scheduled and notice is published in the Register of Ohio, [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us). Notice of the hearing and a copy of the rule may also be sent to any organization or persons the Department determines to be directly affected by the proposed rule. In addition to public notice given in the register of Ohio, the agency may give whatever other notice it reasonably considers necessary to ensure notice is given to all persons who are subject to or affected by the proposed rule, amendment, or rescission. The agency is required to provide a copy of the published notice required by 119.03 (A) to any person who requests it and pays a reasonable fee, not to exceed the cost of copying and mailing.

At the Department's public hearing any person affected by the proposed rules may appear, testify in person or through an attorney, or both, and may present his/her position either orally or in writing, offer and examine witnesses and present evidence in support of or in opposition to the proposed rule. All comments submitted to the Department are carefully reviewed and the Department may revise the proposed rule as appropriate.

### **Public Hearing – Joint Committee on Agency Rule Review**

JCARR is a permanent legislative committee composed of members from both houses of the General Assembly. In addition to the Department's hearing, JCARR holds a public meeting in conjunction with its review of the proposed rules.

JCARR has 65 days to review proposed rules to ensure that:

1. The rules do not exceed the scope of the rule-making agency's statutory authority;
2. The rules do not conflict with a rule of that agency or another rule-making agency;
3. The rules do not conflict with the intent of the legislature in enacting the statute under which the rule is proposed; and
4. The rule-making agency has prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission.

At the public meeting Committee members may question representatives from state agencies about any concerns they have regarding a rule and members of the

public have an opportunity to bring any concerns they have to the Committee's attention.

The Committee's meeting dates and the rules on their agenda may be obtained from their website: [www.jcarr.state.oh.us](http://www.jcarr.state.oh.us) or by calling them at (614) 466-4086.

### **Finalization of Rules**

Following JCARR's 65 day review period, the Department adopts the rule and establishes the date the rule becomes effective. The adoption of the final rule is also public noticed in the Register of Ohio at [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us).

### **PUBLIC INVOLVEMENT AND HOW TO PARTICIPATE**

While the Department has a legal duty to implement legislation through the adoption of rules, the Department needs and welcomes input from members of the public who are affected by the rules. Their expertise and perspective help assure the rules will have both a sound factual and legal basis.

Members of the public may participate in the rule-making process through the following opportunities:

- Signing up to be notified electronically through the Ohio Business Gateway ([www.business.ohio.gov/reform](http://www.business.ohio.gov/reform)) when the review of a rule begins and commenting on the rule.
- Serving on advisory committees, and meeting with associations and advocacy groups.
- Reviewing and commenting on draft rules.
- Viewing the notice of rule proposal and public hearing.
- Attending public hearings conducted by the Department of Agriculture.
- Attending hearings conducted by JCARR.

### **ADDITIONAL INFORMATION**

- The reviews of rules under a Common Sense Business Regulation (CSBR) approach are found on the Ohio Business Gateway at: [www.business.ohio.gov/reform](http://www.business.ohio.gov/reform).
- Rules that have been proposed and public hearing notices may be accessed on the Internet at the Register of Ohio: [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us).
- Agendas for JCARR hearings on proposed rules may be accessed on the Internet at the JCARR web site: [www.jcarr.state.oh.us](http://www.jcarr.state.oh.us).
- Current rules for the Department of Agriculture are found at: <http://codes.gov/oac/>.

## CONTACT INFORMATION

Email: [legal@agri.ohio.gov](mailto:legal@agri.ohio.gov)

Telephone: (614) 728-6430

Fax: (614) 995-4585

Mail: Ohio Department of Agriculture

Legal Section

8995 E. Main St

Reynoldsburg, OH 43068