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JOINT COMMITTEE ON AGENCY RULE REVIEW



PROCEDURE MANUAL

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1. The Joint Committee on Agency Rule Review (JCARR).

The Joint Committee on Agency Rule Review (JCARR) was created in 1977 by the General Assembly. The committee consists of five State Representatives and five State Senators. JCARR has the same powers as other standing or select committees and meets when the General Assembly is in session or adjourned. The committee has a chair and vice-chair. In the even number years a Senate member serves as chair and in the odd number years a House member serves as chair. Generally the committee meets about every three weeks. The JCARR schedule and agendas can be found on the JCARR website at www.jcarr.state.oh.us. The committee's primary function is to review proposed new, amended, and rescinded rules from over 100 state agencies to ensure they do not exceed their rule making authority granted to them by the General Assembly. During the rule review process if the JCARR committee determines the agency exceeded its authority, JCARR has the ability to recommend the adoption of a concurrent resolution to invalidate the entire rule or parts of the rule. Please remember, JCARR does not write or approve rules. JCARR can only make recommendations to invalidate a rule. JCARR has a full-time professional staff that makes recommendations to the committee.

2. What to expect at JCARR's public committee hearing.

Before the committee is called to order any person wanting to testify on a rule appearing on the agenda must complete a witness slip. (If a person plans to give testimony at the JCARR committee, a written copy of the testimony should be submitted to the JCARR office at least one business day before the scheduled JCARR meeting.) Agency representatives with rules on the agenda are required to complete an agency representative slip. When the chair calls the committee to order, the rules on the agendas will be read into the record. If any committee member has a question about a rule on the agenda, the chair will recognize the member and call on the agency representative that has authority over the rule for questioning. After the members have had an opportunity to ask questions, the chair will call any witnesses that completed a witness slip. The chair will permit committee members to also ask the witnesses questions. After all registered witnesses have testified, the chair may also ask if there are any additional people in the audience that would like to testify. Witness testimony is limited to how the rule violates JCARR invalidation standards ("prongs"). The rule's policy cannot be discussed at the JCARR meeting. If a committee member wants to make a motion to recommend an invalidation resolution or other committee action, the chair will recognize the member to make the motion. The motion must include the reason for invalidation. If there is a second to the motion, the chair will call for a vote.

3. The Electronic Rule Filing System (ERF).

Agencies must use the Electronic Rule Filing System (ERF) to file rules with JCARR. The public does not have access to the ERF System. It is highly recommended the agency rule filer enroll in ERF training courses offered by the Legislative Services Commission (LSC). To draft a rule the agency must also have access to the Rule Authoring Software (RAS). To enroll in an ERF training course or obtain a copy of the RAS software, contact the ERF Help Desk at (614) 387-2078 or email at erfhelpdesk@lsc.state.oh.us.

4. The Register of Ohio (ROO).

The Register of Ohio (ROO) is a public website that publishes all proposed rules filed with JCARR. It is the “public newspaper” for rules. Rules are on the ROO website for about one year after they are filed with JCARR. The rule and all associated rule documents can be viewed or downloaded from the ROO website. The ROO website is maintained by the Legislative Service Commission (LSC) and any questions about the ROO website should be directed to the ERF Help Desk at (614) 387-2078. The website’s address is www.registerofohio.state.oh.us/.

5. The Rule Summary and Fiscal Analysis (RSFA).

Ohio law requires the Rule Summary and Fiscal Analysis (RSFA) Part A to be attached to every rule filed with JCARR. The RSFA contains information that helps determine if the agency has exceeded its rule making authority. If the rule has a fiscal impact on school districts, or county, township, city, and village local governments, the rule filing agency must also complete a RSFA Part B. The Part B describes how the rule will increase the local government’s expenditures. If a rule has an environmental impact as defined in O.R.C. 121.39, the rule filing agency must also complete a RSFA Part C- Environmental Rule. The environmental form indicates who was consulted in writing the rule and describes the rule’s environmental impact. Copies of the RSFA Part A, B and C can be found in Appendix C.

6. The Common Sense Initiative (CSI) Office.

The Common Sense Initiative (CSI) office is an executive branch entity with the mission of reducing or eliminating a rule’s adverse impact on business. When an agency is drafting a rule or a five year no-change review rule and it appears to have an adverse impact on business as defined in O.R.C. 107.52, the agency must complete a Business Impact Analysis (BIA) form and submit it and the rule to CSI. (The constitutionally elected offices are exempt from CSI review, but must submit a BIA along with the rule to JCARR). If CSI has any suggestions to reduce or eliminate the rule’s adverse impact on business,

they will send the agency a memo with the recommendations. If they do not have any suggestions, CSI still sends a memo to the agency acknowledging their review is complete. The agency must send a memo back to CSI confirming the memo's receipt. An agency cannot file the rule with JCARR with an adverse impact on business until the CSI process is complete. If the agency files a rule with JCARR that has an adverse impact on business and it was not reviewed by CSI, Ohio law requires JCARR to "reject" the rule and return it to the agency (see #28). If you need to contact the CSI office for more information, they can be reached at (614) 466-3396.

7. Referring or re-referring a rule to CSI.

Senate Bill 3 in the 130th General Assembly empowered the JCARR committee to refer or re-refer a proposed or existing rule to the Common Sense Imitative Office (CSI) for review. During a JCARR committee meeting if a member believes a rule up for review may have an adverse impact on business as defined in O.R.C. 107.52, and was not sent to CSI or CSI did not adequately review the adverse impact on business, the member can make a motion to refer or re-refer the rule to CSI. If a second is received and the motion passes with a majority vote, the rule's jurisdictional clock is stopped and the JCARR staff sends the rule to CSI and to the director of Legislative Service Commission (LSC). The LSC director must place the referral notice on the Register of Ohio (ROO). CSI has up to 30 days to analyze the rule for an adverse impact on business. When CSI completes its analysis, they send the results back to JCARR and the agency. The JCARR rule jurisdictional clock restarts with a minimum of 30 days for the committee to review.

8. What is a five year rule review (FYR)?

Ohio law requires all agencies review existing rules every five years to determine if their rules should be eliminated or amended. If the agency determines the rules should not be amended, the rules are filed with JCARR as "no change" rules. This literally means there are no changes to the existing rules. Agencies are responsible for determining when rules are subject to the five year review requirement. The ERF System provides agencies with the capability of checking five year review dates for rules online. Please note there is a five year review exemption. The review exemption is for rules that are a federal government verbatim mandate. For questions about exemption qualifications, please contact the JCARR office.

9. JCARR's jurisdictional time frames to review rules.

JCARR has a limited time frame to review rules. When a new, amended or rescinded rule is filed with JCARR, JCARR has 65 days to review the rule. This jurisdictional time can be extended if the agency

refiles the rule. If a rule is filed with JCARR as a five year no change, JCARR has 90 days to review the rule. The 90 day five year no change jurisdiction cannot be extended. The only way to stop the 90 day JCARR jurisdiction is for the agency to withdraw the rule. Please note JCARR does not control when a rule can be filed, revised, refiled, or withdrawn. The agency determines when a rule enters or leaves JCARR jurisdiction.

10. What are new, amended, rescinded, withdrawn, revised and refiled rules?

A **new rule** is a proposed rule not currently in effect. An **amended rule** is an existing rule with changes. A **rescinded rule** is where the agency wants to remove the entire rule from the Ohio Administrative Code (OAC). A **withdrawn rule** is when an agency withdraws a rule from JCARR's jurisdiction. An agency can withdraw a rule anytime during the JCARR review process, except for when a concurrent resolution to invalidate a rule or part thereof has been introduced. A **revised rule** is when an agency makes changes to a rule under JCARR's jurisdiction in the first 35 days. There is no JCARR jurisdictional extension with revised filed rules. A **refiled rule** is when an agency makes change to a rule after the 35th JCARR jurisdictional day. A refiled rule's JCARR jurisdiction is extended 30 days from the refiling date. For example, let's say the rule is refiled on the 50th day of JCARR's 65 day jurisdiction. JCARR's jurisdiction would be extended to the 80th day from the rule's original filing date.

11. What is To Be Refiled (TBR)?

To Be Refiled (TBR) is a term agencies use to tell JCARR they plan to revise file or refile their rule. When the agency commits to TBR the rule, JCARR removes the rule from the committee meeting agenda. The agency can revise file or refile the rule, keep the rule in TBR status, or withdraw it from JCARR's jurisdiction. Agencies cannot put no change rules in TBR status.

12. Incorporation by Reference.

If an agency references a text or other material into a rule, it is the same as reproducing the entire text or material word for word in the rule. The incorporation by reference must have a citation that enables a person to easily find the text or material. The citation could be a website address or a location where the person can find a hard copy of the text or material to review at no cost. The citation must have a date, a version or an edition. No agency can incorporate a future version of a text or other material. When an agency puts an incorporation by reference in a rule, JCARR must be able to review the reference to make sure it does not contain a JCARR prong. If the reference citation in the rule makes it

unreasonable for JCARR to find the reference, the agency is required to forward an electronic copy of the text or material to JCARR with the rule for review. When an agency final files a rule with an incorporation by reference, the agency must ensure the text or material is available from the agency. The agency cannot charge the person to review the text or material at the agency.

Note: If the agency has incorporated an application or form into the rule and there is a non-substantive revision to the application or form, the agency must scan and email a copy of the modified application or form to JCARR's office for review. If JCARR believes the modification is substantive, the rule must go through the amended rule review process. An example of a non-substantive modification would be changing a date on the application. If there are any questions about a non-substantive incorporation, contact the JCARR office.

13. Exemptions to Incorporation by Reference (IBR) requirements (O.R.C. 121.75).

The Ohio Revised Code exempts IBR requirements that are found in O.R.C. 121.71 through 121.74, if the IBR comes from one of the following Ohio government references:

- The Ohio Revised Code
- An uncodified Ohio statute
- An act of this state in the Laws of Ohio
- An Ohio Administrative Rule
- A rule in the Monthly Record
- A rule in the Register of Ohio

The following federal government references are also exempt from O.R.C. 121.71 through 121.74, but the reference must specify the date of the text that is being incorporated:

- The United States Code
- An uncodified federal statute
- A federal act in the Statutes at large
- A federal regulation in the Code of Federal Regulations
- A federal regulation in the Federal Register

The following are some additional exemptions from O.R.C. 121.71 through 121.74 which also do not have to be dated:

- Any internal agency management rule

- The rule obtains or maintains authorization of a federally delegated program
- The rule is required to receive federal funds under a federally funded program
- If the reference is digital application or a form where only data is entered and it does not establish policies
- If the reference describes federal administrative or legislative data such as interest rates, or poverty rates
- If the reference describes generally accepted commercial, industrial, building, fire, plumbing, electrical, safety or other building codes
- If the reference is copyrighted material where permission has been obtained to use.

Note: If the agency claims they are exempt from incorporation by reference standards as found in O.R.C. 121.75 and they are not, this would be a JCARR prong violation.

14. Final filing a rule.

A new, amended or rescinded rule is not automatically effective after it leaves JCARR's jurisdiction. For a rule to be effective an agency must final file the rule in the ERF System and set an effective date. An agency cannot final file a rule until it leaves JCARR's jurisdiction, and the rule's effective date must be at least ten days from the final filing date. No change five year review rules are not final filed after they leave JCARR's jurisdiction. The reason is a no change rule is an existing rule that is already in effect.

15. Filing rules under Ohio Revised Code 111.15 and under Ohio Revised Code 119.03.

When the General Assembly instructs an agency to write rules, they will usually put in the authorizing legislation whether the rules will be written under O.R.C. 111.15 or O.R.C. 119.03. If the rules are written under O.R.C. 111.15, the agency is not required to have a public hearing. Rules written under O.R.C. 119.03 require the agency to have a public hearing within 31 to 40 days after filing the rules with JCARR. At the public hearing the agency takes oral and written comments about the rule. There are several exemptions for filing rules under O.R.C. 111.15 and O.R.C. 119.03. Please refer to sections 111.15 and 119.03 in the Ohio Revised Code for the exemption details.

16. Hearing Summary Report.

With Senate Bill 3's passage in the 130th General Assembly, every agency that conducts a public hearing must complete and attach a Hearing Summary Report (HSR) to their rule. The HSR's purpose is to have all comments received during the agency's public hearing process consolidated into a summary. For consistency, JCARR has created a Hearing Summary Report template which is found in Appendix D. The HSR's first page requires a listing of all organizations or individuals that presented testimony. The second page contains the consolidated comments summary, and the last page indicates how comments received were incorporated into the rule, or if no comments were incorporated explain why not. Since agency public hearings happen 31 to 40 days after the rule is filed in the electronic rule filing (ERF) system, the HSR cannot be attached at the time of filing with JCARR. Therefore, the agency must attach the HSR to the rule at a later date, but before the JCARR hearing. If an agency cannot attach the HSR to the rule before the JCARR committee hearing, it is suggested the agency put the rule in TBR status until the HSR can be attached.

17. Emergency rule filing.

The state's health, safety or welfare may require a rule to be effective immediately. If it is an O.R.C. 119.03 rule, the agency must seek a Governor's executive order authorizing an emergency rule. The agency is required to file the emergency rule with JCARR, but JCARR has no jurisdiction over the rule. When the emergency rule is filed with JCARR, it is effective for 120 days. If an emergency rule is filed pursuant to O.R.C. 119.03(G)(2), it is effective for 180 days. In most cases the agency will file a non-emergency permanent rule with JCARR about the same time, so when the emergency rule expires a permanent rule can be in place. There are two exceptions where an emergency rule can be extended. One exception is if a parallel permanent rule is refiled during "December Carryover" which causes the permanent rule's effective date to exceed the 120 day emergency rule. In this case the Governor has the authority to issue a second 120 day emergency rule executive order. The other exception is if the permanent rule is going through the JCARR process and the committee issues an authorization finding to revise and refile, the Governor has authority to issue a 60 day emergency rule executive order. If the General Assembly requires the agency to file its rules under O.R.C. 111.15, the agency is not required to seek an executive order from the Governor to issue an emergency rule. The emergency rule extension exceptions stated above also apply to O.R.C. 111.15 emergency rules.

18. Liability insurance, bond or financial responsibility as a condition of licensure.

Sub. House Bill 26 of the 132nd General Assembly mandates all agencies to see if their rules require liability insurance, a bond, or any financial responsibility as a condition of licensure. If the rules does, the agency is required to search if the liability insurance, bond, or any financial responsibility is available in the market place. This needs to be done for all proposed rules and five year review rules. The agency must “certify” they conducted the search by answering a question in the Electronic Rule Filing System (ERF) when processing the rule. (O.R.C. 106.03 (A)(8) and 119.03 (C).

19. Processing a new, amended or rescinded rule.

The agency starts the process by filing the rule in the ERF System. Once the agency presses the ERF file button, Ohio law puts the rule under legislative review for at least 65 days. If the rule is new or rescinded, all rule sections are subject to legislative review. If it is an amended rule, only the amended rule sections are subject to legislative review. However, if the amended rule is in its five year review requirement, all rule sections are subject to legislative review.

The rule is received in the JCARR office via email from the ERF System. JCARR staff prints the rule with any attachments and creates a file. Within 48 hours the JCARR rule processor will “triage” the rule looking for an adverse impact on business. If the processor determines the rule creates an adverse impact on business and the agency did not send the rule to CSI, JCARR will call the agency and inform them the rule should have gone to CSI. In most cases the agency will withdraw the rule from the ERF System, or put it in TBR status and send it to CSI for processing. If the agency does not withdraw it, Ohio law requires the JCARR committee to reject the rule. If the committee votes to reject, the rule is withdrawn from the ERF System.

The rule is next reviewed by a JCARR staff lawyer. The lawyer verifies the agency has the authority from the General Assembly to write the rule, and determines if the rule violates one of the following JCARR standards (prongs):

- Does the rule exceed the rule-making agency's statutory authority?
- Does the rule conflict with a rule of that agency or another state rule-making agency?
- Does the rule conflict with the intent of the legislature in enacting the statute under which the rule is proposed?
- Has the rule-making agency prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission?

- Has the rule-making agency met the incorporation by reference standards for a text or other material as stated in O.R.C. sections 121.72, 121.73, 121.74 or 121.75?
- If the rule has an adverse impact on business as defined in O.R.C. 107.52, has the rule-making agency demonstrated through the business impact analysis (BIA), the Common Sense Initiative Office (CSI) recommendations and the agency's memorandum of response to the CSI recommendations, that the regulatory intent of the rule justifies its adverse impact on business.
- If the agency is subject to the regulator restrictions statutes, the agency has failed to justify the proposed adoption, amendment, or rescission of a rule containing regulatory restriction.
- The Proposed rule or revised proposed rule implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.

If the agency does not have the authority to write the rule or if it violates one or more of the six JCARR standards (prongs), the JCARR lawyer will contact the agency and inform them of the rule's violations and suggest the rule could be subject to a recommendation of invalidation. In most cases the agency will put the rule into TBR status (see #11) and refile the rule at a later date to correct any issues. If the agency does not make an effort to correct the problem(s), the JCARR committee chair and vice chair will be notified of the rule's violation(s) and the staff's recommendation(s) for action. If the chair and vice chair agree, generally they will ask the rule be put on the review portion of the next JCARR committee agenda for possible vote on an invalidation recommendation.

20. Processing a no change five year review rule.

The five year review process starts by the agency determining when a rule is subject to five year review. JCARR does not set, initiate, or assign five year review dates. Please note a no change five year review rule is not required to have a public hearing. Before filing the rule on the ERF System the agency must review the rule under the following standards to see if the rule should be modified:

- Exceed or conflicts with the purpose, scope or intent of the statute;
- Provides inadequate flexibility at the local level;
- Creates a compliance or oversight burden for the state agency or for any person or entity that is greater than the burden that would be created if the agency accomplished the intended purposes of the restriction by other means;
- Incorporates a text or other material by reference and if so:
 - a. The citation accompanying the incorporation by reference is such as would not reasonably enable a reasonable person to whom the rule applies readily and without charge to find and inspect the incorporated text or other material or,

- b. The Citation accompanying the incorporation by reference is such as would not reasonably enable the joint committee on agency rule review readily and without charge to find and inspect the incorporated text or other material, or
 - c. If the rule has been exempted in whole or in part from sections 121.71 to 121.74 of the revised code on grounds the incorporated text or other material has one or more of the characteristic described in division (B) of section 121.75 of the Revised Code, the incorporated text or other material does not actually have any of these characteristics.
- Duplicates or overlaps with or conflict with a federal law or rule or another law or rule of this state. A rule duplicates, overlaps with or conflicts with another law or rule if it imposes a duty or liability on a person or entity that the other law or a rule also imposes on that person or entity in whole or in part or imposes a duty of liability that may require a person or entity to violate the other law or rule in whole or in part. If the rule duplicates, overlaps with or conflicts with a rule adopted by another state agency, the two agencies shall determine which agency shall amend or rescind its rule and shall develop and execute a plan to work together to achieve the required oversight.
- Has an adverse impact on business as determined under section 107.52 or the revised code;
- Has an adverse impact on any other person or entity;
- Contains words or phrases having meaning that in contemporary usage are understood as being derogatory or offensive;
- Requires liability insurance a bond or any other financial responsibility instrument as a condition of licensure;
- Imposes a more severe duty or liability than restrictions in neighboring state in order to accomplish the same goal;
- Implements federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.

If the agency believes none of the above standards apply, they will file the five year review rule as a no change rule in the ERF System. The JCARR office receives the filed rule via an email. The JCARR will triage the rule within 48 hours to see if the rule has an adverse impact on business. If the rule has an adverse impact on business and it did not go to the CSI office, the JCARR will call the agency and inform them the rule should have gone to CSI before being filed with JCARR. In most cases, the agency will withdraw the rule from JCARR and send it to CSI. (Note: a no change rule cannot be put into TBR status). JCARR will then review the rule to see if it could be subject to an invalidation recommendation. The following are the reasons for a no change invalidation recommendation;

- The agency did not amend or rescind the rule based on the review standards listed in O.R.C. 106.03;
- The rule's adverse business on impact is not justifiable;
- The rule failed to comply with incorporation by reference standards;

- If the agency is subject to ORC 121.95, 121.951, 121.952 and 121.953, the agency has failed to justify the retention of a rule containing a regulatory restriction;
- The rule implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.

If there is a reason for an invalidation recommendation, JCARR will contact the agency and inform them of the violation. In most cases the agency will withdraw the rule and file it as an amended or rescinded rule. If the agency does not make an effort to correct the problem(s), the JCARR committee chair and vice chair will be notified of the rule's violation(s) and the staff's recommendation(s) for action. If the chair and vice chair agree, generally they will ask the rule be put on the review portion of the next JCARR committee agenda for possible vote on an invalidation recommendation.

21. Invalidating an amended, new, rescinded or no change rule.

Amended, new, rescinded or no change rule invalidation is generally a multistep process. At the JCARR committee meeting if a committee member believes the rule violates one of the JCARR standards (prongs), the member will make a motion to recommend a concurrent resolution be created to invalidate the rule. In the motion the member must indicate the JCARR standard (prong) that is violated. If the motion receives a second, the chair will put the motion to a vote. If a majority vote is received, the recommendation is passed. If the motion is for a no change rule, a 2/3 majority vote is required for passage. When the committee is adjourned, Legislative Services Commission (LSC) will prepare a concurrent resolution with the chair or vice chair as the resolution's sponsor. (If neither the chair or vice chair want to sponsor the resolution, a committee member could volunteer as the sponsor.) Depending if the sponsor is a Senator or Representative, the resolution is introduced in the House or Senate. The legislative body in which it is introduced has five session days to act on the resolution. If the resolution is not voted on in that time frame, the resolution dies. If the resolution is voted on and passes within five session days, the resolution goes to the other legislative body for a vote within five session days. If the resolution passes, then the rule or part thereof is invalidated. If the resolution does not pass or no action was taken within five session days, there is no rule invalidation.

Please note: When the concurrent resolution is introduced in the House or Senate, the rule is put into suspension. That is, the agency cannot withdraw or modify the rule. If the invalidation resolution fails to pass the General Assembly or dies for lack of action, the rule comes out of suspension. If the

General Assembly invalidates a rule, the rule cannot be filed with JCARR through the remaining time in that General Assembly. However as an exception, the General Assembly can pass a resolution permitting the agency to file the rule with JCARR before the end of that assembly.

22. Invalidating a rule for missing its five year review.

Ohio law requires most agencies to review all rules every five years for revisions. If the agency does not see a need for revisions, they will submit the rule to JCARR as a no change rule (see #8). If an agency misses the five year review date requirement, the rule could be subject to an invalidation recommendation. The missed five year review date invalidation is a multistep process. At the chair's discretion, the rule will be put on the committee agenda for invalidation recommendation discussion. The agency must appear before the committee to explain why the committee should not recommend a resolution for invalidation. If a committee member is not satisfied with the agency's explanation, the member could make a motion to recommend a concurrent invalidation resolution. If the motion receives a second, the chair will put the motion to a vote. If the motion receives a majority vote, the recommendation is passed. When the committee is adjourned, Legislative Services Commission (LSC) will prepare a concurrent resolution with the chair or vice chair as the resolution's sponsor. (If neither the chair or vice chair want to sponsor the resolution, a committee member could volunteer as the sponsor.) Depending if the sponsor is a Senator or Representative, the resolution is introduced in the House or Senate. The legislative body in which it is introduced has five session days to act on the resolution. If the resolution is not voted on in that time frame, the resolution dies. If the resolution is voted on and passes within five session days, the resolution goes to the other legislative body for a vote within five session days. If the resolution passes, the rule is invalidated. If the resolution does not pass or no action was taken within five session days, there is no rule invalidation.

23. Five year rule review extension.

If an agency believes they cannot make their five year review requirement, Ohio law permits the agency to request a time extension from JCARR. They can request up to a six month extension, and Ohio law permits JCARR to grant an additional six month extension with good cause. The agency completes the letter and submits it to the JCARR Director for approval. If approved, the rule's five year review date is extended. Please note all extensions start at the five year review date listed on the rule and not the date when the request was approved. For example, if the five year review date is June 1st and the extension request was submitted and approved on July 1st, the six month extension would end on December 1st not

January 1st. The agency can also request an extension for less than six months. (An extension request example letter is on the JCARR website).

24. What is an adverse impact on business?

Rules that have an adverse impact on business must be processed in a special way. Most people think if a rule hurts a business it is an adverse impact on business. This is not the case. When the General Assembly defined adverse impact on business, they defined it very narrowly. Adverse impact on business is defined in O.R.C. 107.52 as, a rule that;

- Requires a license, permit or any other prior authorization to engage in or operate a line of business,
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with the rule's terms,
- Requires a specific expenditure or the report of information as a condition of compliance, or
- It would be likely to directly reduce the revenue or increase the expense of business.

If the rule has one of the above, the rule must first be sent to the Common Sense Initiative Office for analysis before filing the rule with JCARR. There is an exception on who must file with the Common Sense Initiative Office. The elected statewide offices of Governor, Lt. Governor, Auditor, Attorney General, Treasurer and Secretary of State are not required to send their rules that contain an adverse impact on business to the Common Sense Initiative Office. However, they are required to complete a CSI Business Impact Analysis (BIA) form and attach it to the rule when they file with JCARR.

25. What is December Carry-Over?

Ohio law requires when a rule is original filed, revised filed, or refiled in December, the JCARR jurisdictional clock does not start until the first General Assembly day in the new year. An example how this would work is if an agency original files a rule on December 15th and the first session day of the New Year is January 4th, the JCARR 65 day jurisdictional clock would start on January 4th. For a refiled rule in December Carry-Over, that is a rule under JCARR jurisdiction for more than 35 days, it has a 30 day JCARR jurisdiction extension starting on the General Assembly's first January session day. For a revised filed rule in December Carry-Over, that is a rule under JCARR jurisdiction for less than 35 days, the rule has a 65 day JCARR jurisdiction extension starting on the General Assembly's first January session day. Please note if a rule is original filed in December, the law still requires the agency to have a public hearing 31 to 40 days after it is filed. The hearing clock does not start with the first General Assembly day

of the New Year. The December carry over law does not apply to Emergency Rules, No Change rules or final filed rules.

26. RuleWatch Ohio.

RuleWatch Ohio is a website created by JCARR that enables you to follow rule activity from over 100 state agencies. It is very easy to join RuleWatch. Just go to www.rulewatchohio.gov and enter your email address and a password. You can follow rules on RuleWatch by two ways. You can follow rules by related subject areas or by individual rule. When rules you've selected have activity, you will receive an email alert overnight. The email will have rule information and the rule's agency public hearing date.

27. Authorization finding to revise and refile.

As an alternative to the JCARR committee recommending a rule be invalidated, the committee may vote to authorize the agency to consider revising and refiling the rule to correct a JCARR "prong" violation. If a member believes the rule could be subject to a recommendation for invalidation and would like to give the agency a chance to consider correcting a prong violation, the member will make a motion to authorize the agency to consider revising and refiling the rule. The JCARR prong violation must be stated in the motion. If the motion receives a second, the chair will call for a vote. Six votes are needed to pass the motion. If the motion passes, the JCARR jurisdictional time clock stops. The clock stays stopped for 30 days or until the agency refiles or withdraws the rule. The JCARR staff will send the committee's authorization finding to the agency, secretary of state, the director of LSC, and the office of the governor if the proposed rule was to replace an emergency rule. If the agency refiles the rule, the JCARR jurisdiction is extended for at least 30 days from the refiling date, and the rule could still be subject to an invalidation recommendation from the committee. If the agency does not refile the rule during the 30 days, on the 31st day the JCARR jurisdictional clock runs for an additional 30 days. The committee may issue only one authorization consideration for the proposed rule. If the rule was to replace an emergency rule, the governor may issue an order extending the emergency rule for another 120 days.

28. Removing obsolete rules from the Ohio Administrative Code.

If a state agency is eliminated and has rules in the Ohio Administrative Code (OAC), the agency cannot rescind the rules because the agency does not exist. We call these rules obsolete rules. The following procedure was created to remove obsolete rules from the OAC. The JCARR executive director

will verify that the obsolete rule or rules should be removed from the OAC. The JCARR executive director will draft a committee motion that instructs the director of the Legislative Services Commission (LSC) to remove the listed obsolete rule(s) from the OAC. A copy of the motion must be sent to the Common Sense Initiative office. The obsolete rules listed in the motion will appear on the next JCARR committee agenda in the “obsolete rules” section. At the next JCARR committee meeting, the committee chair or another committee member shall offer the motion to remove the rules from the OAC. If the motion passes, the JCARR executive director will certify the motion and transmit a copy to the director of LSC. The LSC director shall remove the rule or rules from the OAC and maintain a copy of the obsolete rule or rules in the “obsolete rule file.”

29. Rejecting a rule for not going to the Common Sense Initiative Office (CSI).

If a rule has an adverse impact on business and the agency has not sent it to CSI, Ohio law requires the JCARR committee reject a rule and return it to the agency as if it was never filed. The JCARR staff first will contact the agency and inform them their rule has an adverse impact on business and it should have been sent to CSI. In most cases, the agency will withdraw the rule and send it to CSI. If the agency does not believe the rule has an adverse impact on business, the JCARR staff will put the rule on the JCARR committee agenda for rejection. If the JCARR committee votes to reject the rule, the JCARR staff will contact LSC and have the proposed rule removed from the rule filing system and send a letter to the agency saying their rule was rejected for having an adverse impact on business and was not sent to CSI.

30. JCARR committee votes to recommend the agency put policy into a rule (O.R.C. 101.352).

If the JCARR committee chairman becomes aware that an agency is conducting business through policy and not by rule, the chairman may request the agency come before the committee to explain why they have not put the policy in rule. The agency will be given at least a 30-day notice to appear before the committee. At the JCARR committee meeting, the agency representative will explain why the agency is relying on the policy and not rule. The public may also give comments at the meeting. After the agency’s explanation and committee discussion, the committee, by majority vote, may recommend the agency put the policy in rule. If the committee votes to recommend, the agency has up to six months to start the process of writing the rule. While the agency is writing the rule, it may rely on the

policy. If the agency fails to start the rule writing procedure within six months or abandons the rule making process, the agency may not rely on the policy to conduct business.

31. JCARR committee votes to have an agency write a rule as mandated by the Ohio Revised Code (O.R.C. 101.353).

If the JCARR committee becomes aware of an agency the General Assembly specifically directed to write a rule and they have not, the JCARR chairman may request the agency appear before the committee to address why the agency has not written the rule. The request will identify the statute that requires a rule to be written along with the time and location of the requested meeting appearance. At the committee meeting, the agency will explain why they have not written the rules as mandated. The public may also present comments about the rule not being written at the hearing. After the agency explains why they have not written the rule, the committee, by a majority vote of its members, will advise the agency they need to commence rulemaking as soon as reasonably feasible.

32. Bringing back a rule before five year review (O.R.C. 106.032).

If an existing rule has an unintended or unexpected effect on business, the JCARR chairman may bring a motion before the committee for an agency to bring the rule in early for five year review procedure (O.R.C. 106.031). If the chairman makes the motion, the motion needs six votes to pass. This motion can only be made once every five years for the rule in question. JCARR staff will send the order to the agency, Legislative Services Commission (LSC) and Common Sense Initiative Office (CSIO). LSC will publish the order in the Register of Ohio (ROO). The agency shall start the O.R.C. 106.031 process no later than 30 days after receiving the order. In addition to the regular no change standards for recommending invalidation, the committee can recommend invalidation if the existing rule has an unintended or unexpected effect on business that is not reasonably within the express or implied scope of the statute under which the agency adopted the existing rule.

33. Agency policy to rule (O.R.C. 121.93).

An agency shall review its operations to see if they have policy that needs to be put in rule. The agency must do at least one of these reviews during a governor's term. When the agency does the review, it must determine whether the policy should be put into rule if:

- The policy asserts general and uniform operations

- It makes the policy more available to the public
- It makes the policy more available to the persons specifically affected
- Makes the policy better known in advance of its application
- It enables greater public participation in improvement of the policy
- It enables greater participation of persons affected by the policy
- It makes the policy more understandable
- It makes the policy more readily available to those charged with monitoring or reviewing the agency's operations.

The agency must send JCARR a notice it has completed a policy review and specify the number of reviews completed. The JCARR report must also include the number of policies found, the consideration regarding the identified policies, and the policies that will be put into rule.

If the agency determines rulemaking is required, the agency shall commence in rule making no later than six months after the determination was made. The agency may rely on the policy while the rulemaking process is proceeding. If the rulemaking is not started within six months or the rulemaking process is abandoned after started, the agency may not rely on the policy.

Note: SB 221 is effective February 18, 2019. The DeWine administration took oath of office on January 14, 2019. Therefore, the report to JCARR will not be due until the end of Governor DeWine's first term in 2023.

34. Petitioning an agency to write policy in rule (O.R.C. 121.931).

A person is permitted to petition an agency to put policy into a rule if;

- They were a party to adjudication or determination and received an order or disposition
- Received a civil action judgement by the agency

The petitioner shall explain why the policy under O.R.C. 121.93 should be in rule. The petition must be sent to the agency within ninety days after receiving a determination, order or judgement from the agency. A copy of the petition must be sent to JCARR. The agency must within thirty days of receiving the petition acknowledge receipt of the petition to the petitioner. The agency must notify the petitioner by certified mail return receipt of their decision to grant or deny the petition. If the agency grants the petition,

it shall commence in the rule-making process as soon as possible but no later than six months. The agency may continue to rely on the policy during the rule-making process. If the agency intends to deny the petition, the agency must afford the petitioner a hearing. The petitioner has fifteen days after receiving the denial letter to request a hearing. If the petitioner wants a hearing, the agency must send a certified return receipt letter notifying the petitioner of the time and place of the hearing. No later than thirty days after the hearing, the agency must deny or grant the petition. If the agency grants the petition, it shall commence in the rule-making process as soon as possible but no later than six months. The agency may continue to rely on the policy during the rule-making process. If the agency denies the petition, the agency will notify the petitioner and explain why their request was denied. The petitioner is not entitled to an appeal.

35. Exemptions granted to elected offices and entities (O.R.C. 121.933).

The following offices and entities are exempt from O.R.C. 101.352 (policy to rule), O.R.C. 101.353 (writing mandated rules), O.R.C. 121.93 (policy to rule review every four years), and O.R.C. 121.931 (petitioning an agency to write a rule):

- Governor
- Lt. Governor
- Secretary of State
- Auditor of State
- Treasurer of State
- Attorney General
- Institutions of Higher Education
- The State pension systems

36. Senate Bill 9 in the 134th General Assembly

Senate Bill 9's objective is to reduce the number of regulatory restrictions. This requirement only applies to 46 executive agencies as defined in R.C. 121.95. The law requires the agency must reduce the number of regulatory restrictions by 10% before June 30, 2023, by 20% before June 30, 2024 and 30% before June 30, 2025. If the agency cannot make the required reduction by the dates specified, the agency can come before the JCARR committee to ask for a reduced percentage. Once the agency meets the percentage reduction, they cannot add any restrictions that would increase the percentage.

All agencies that file administrative rules are required to remove two regulatory restrictions for every restriction they add. There is no termination date for the two for one requirement.

For additional information concerning the JCARR process or any information outlined in this manual, please visit the JCARR website at www.jcarr.state.oh.us or contact JCARR directly at (614) 466-4086.

Appendix A

Glossary of Terms

The *Glossary of Terms* is designed to provide an introductory explanation of terms that may be encountered when reviewing and researching rules.

111 Rule

This refers to section 111.15 in the ORC that tells the agency how to write its rule. A 111 rule does not require the agency to have a rule public hearing.

119 Rule

This refers to section 119.03 in the ORC that tells the agency how to write its rule. A 119 rule requires the agency to have a public rule hearing within 31 to 40 days after filing the rule with JCARR.

-A-

Adopted Rule

A rule that has completed the JCARR review process and is effective.

Amended Rule

It is an existing rule that has been modified and submitted to JCARR for review.

Amplifying Statute

Is a section in the Ohio Revised Code that supports the agency's ability to implement a rule and gives further guidance from the general assembly.

Authorizing Statute

A section in the Ohio Revised Code where the general assembly directs the agency to write rules with specific instructions.

-C-

CSI

CSI is the Common Sense Initiative Office. It is an executive branch function that reviews agency rules before they are filed with JCARR to see if the rule's adverse impact on business can be reduced or eliminated.

-D-

Department of Aging (Aging)

It is a state agency created by the general assembly that advocates for senior citizens. Ohio law requires any rule filed with JCARR that primarily affects persons sixty years of age or older, the rule must be submitted to the Department of Aging for review. All rules filed with JCARR that meet this standard are automatically sent to Aging.

-E-

Electronic Rule Filing System (ERF)

The ERF system was created in the 123rd General Assembly. It is a fully electronic system that agencies use to create, amend and submit rules to JCARR for legislative oversight review.

Emergency Rule

A rule may need to be effective immediately to protect the state's health, safety and welfare. If this is the case, the agency can issue an emergency rule that is effective for 120 days. In most cases the agency must first obtain an executive order from the governor to issue an emergency rule.

Environmental Protection

As used in O.R.C. §121.39, environmental protection means:

- (1) Protection of human health or safety, biological resources, or natural resources by preventing, reducing, or remediating the pollution or degradation of air, land, or water resources or by preventing or limiting the exposure of humans, animals, or plants to pollution;
- (2) Appropriation or regulation of privately owned property to preserve air, land, or water resources in a natural state or to wholly or partially restore them to a natural state;
- (3) Regulation of the collection, management, treatment, reduction, storage, or disposal of solid, hazardous, radioactive, or other wastes;
- (4) Plans or programs to promote or regulate the conservation, recycling, or re-use of energy, materials, or wastes.

ERF Help Desk

The Electronic Rule Filing (ERF) help desk provides technical and filing support for ERF users. They also offer ERF training courses. The help desk phone number is (614) 387-2078.

Five Year Review (FYR)

Under Ohio law most rules must be reviewed every five years by the agency to see if their rules should be eliminated or changed.

-H-

HSR

This is the Hearing Summary Report. It is a form that must be attached to rules that consolidates all the comments the agency received during the agency's public hearings.

-I-

Incorporation by Reference (IBR)

This is when an agency incorporates reference documents from other entities into their rule.

Internal Management Rule

Rules that govern the agency's internal management and operations. These rules are not subject to JCARR legislative review.

-J-

JCARR

The Joint Committee on Agency Rule Review. JCARR is located at 77 S High St, Concourse Level, Columbus, Oh 43215.

-L-

LSC

The Legislative Service Commission (LSC) is a non-partisan government entity that supports the functions of the general assembly. LSC is located at 77 S High St, 8th floor, Columbus, Oh 43215.

-N-

New Rule

A rule that is not currently in effect or a rule that is being rescinded and replaced with a new rule.

No Change Rule

A rule that is being reviewed under the five year review requirement and the agency decides the rule does not need changed in anyway.

-O-

O.A.C.

Ohio Administrative Code (O.A.C.) - this is a document that contains all administrative rules adopted by state agencies.

O.R.C.

Ohio Revised Code (O.R.C) – this is document that contains all codified laws created by the general assembly.

Original Rule Filing

This is the initial filing of a rule whether it is a new, amended, or rescinded rule.

-P-

Proposed Rule

It is a rule currently in the JCARR review system or has completed the JCARR review system but the agency has not set the rule's effective date.

Public Hearing

It is an open meeting conducted by the agency within in 31 to 40 days after the agency files the rule with JCARR.

-R-

Refiled Rule

A rule that has been under legislative review for more than 35 days and the agency amended the rule.

Register of Ohio (ROO)

The register is an “electronic publication” that functions as a public newspaper for rule activity. It is maintained by Legislative Services Commission.

Regulatory Restriction

As defined in O.R.C. 121.95, rules that include the words "shall," "must," "require," "shall not," "may not," and "prohibit" shall be considered to contain regulatory restrictions.

Rescinded Rule

When an agency wants to remove the entire rule from the Ohio Administrative Code (OAC).

Revised Rule

When an agency makes changes to a rule under JCARR jurisdiction in the first 35 days.

RSFA

The Rule Summary and Fiscal Analysis contains questions regarding the rule and must be filed with each rule (except emergency rules).

RuleWatch Ohio

This is a web based system created by JCARR that enables the public to track all rule activity by email.

-T-

To Be Refiled (TBR)

This is what the agencies use to tell JCARR they plan to revise file or refile their rule. When this happens the rule is removed from the JCARR agenda.

-W-

Withdrawn Final File

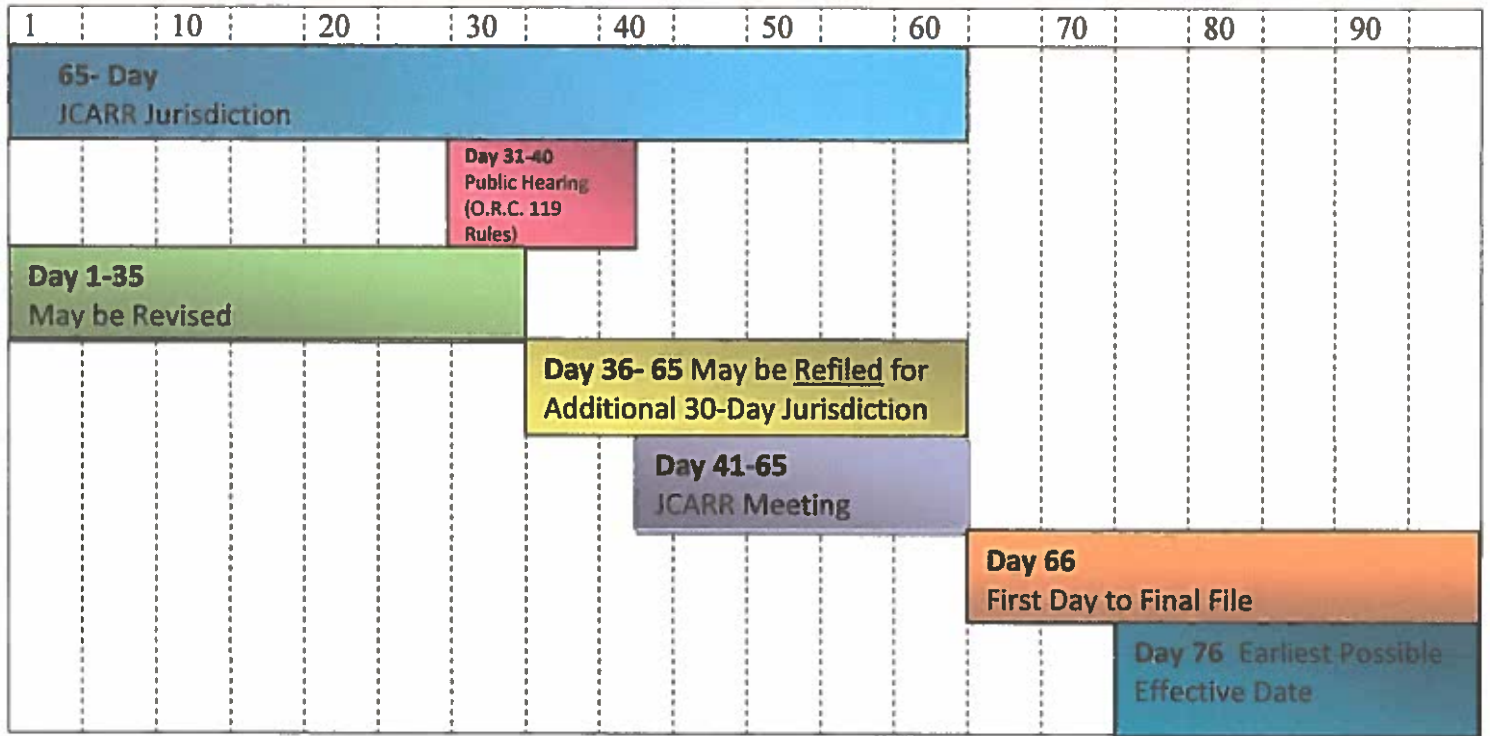
This is when an agency withdraws a rule after it has been final filed with an effected date, but the effective date has not passed.

Withdrawn Proposed Rule

This is when an agency withdraws a rule prior to the agency final filing the rule with an effective date.

Appendix B

JCARR Rule Processing Timelines



JCARR No Change Rule Processing Timeline



Appendix C
Rule Summary and Fiscal
Analysis Part A – General
Questions

Rule Number:

Rule Type:

Rule Title/Tagline:

Agency Name:

Division:

Address:

Contact:

Phone:

Email:

I. Rule Summary

1. Is this a five year rule review?
 - A. What is the rule's five year review date?
2. Is this rule the result of recent legislation?
 - A. If so, what is the bill number, General Assembly and Sponsor?
3. What statute is this rule being promulgated under?
4. What statute(s) grant rule writing authority?
5. What statute(s) does the rule implement or amplify?
6. Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?
 - A. If so, what is the citation to the federal law or rule?

7. What are the reasons for proposing the rule?
8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.
9. Does the rule incorporate material by reference?
10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.
11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

II. Fiscal Analysis

12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.
13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?
14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).
15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).
16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

III. Common Sense Initiative (CSI) Questions

17. Was this rule filed with the Common Sense Initiative Office?
18. Does this rule have an adverse impact on business?
 - A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business?

- B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms?
- C. Does this rule require specific expenditures or the report of information as a condition of compliance?
- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies?

IV. Regulatory Restriction Requirements under S.B.9. Note: This section only applies to agencies described in R. C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95?

- A. How many new regulatory restrictions do you propose adding to this rule?
- B. How many existing regulatory restrictions do you propose removing from this rule?
- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.
- D. Please justify the adoption of the new regulatory restriction(s).

Rule Summary and Fiscal Analysis
Part B - Local Governments Questions

1. Does the rule increase costs for:
 - A. Public School Districts
 - B. County Government
 - C. Township Government
 - D. City and Village Governments
2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.
3. Is this rule the result of a federal government requirement?
 - A. If yes, does this rule do more than the federal government requires?
 - B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?
4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:
 - A. Personnel Costs
 - B. New Equipment or Other Capital Costs
 - C. Operating Costs
 - D. Any Indirect Central Service Costs
 - E. Other Costs
5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.
6. What will be the impact on economic development, if any, as the result of this rule?

Rule Summary and Fiscal Analysis

Part C - Environmental Rule Questions

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted?

Please list each contact.

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered?

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

Please indicate the reasons for not providing the information.

(C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program?

Is the proposed rule or rule amendment more stringent than its federal counterpart?

What is the rationale for not incorporating the federal counterpart?

Not Applicable

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend?**

Please explain why?

Sample

Hearing Report and Summary

Hearing Date: Click here to enter a date.

Today's Date: Click here to enter a date.

Agency: Click here to enter text.

Rule Number(s): Click here to enter text.

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing:

1. Click here to enter text.
2. Click here to enter text.
3. Click here to enter text.
4. Click here to enter text.
5. Click here to enter text.
6. Click here to enter text.
7. Click here to enter text.
8. Click here to enter text.
9. Click here to enter text.
10. Click here to enter text.
11. Click here to enter text.
12. Click here to enter text.
13. Click here to enter text.
14. Click here to enter text.
15. Click here to enter text.
16. Click here to enter text.

Sample

Hearing Report and Summary

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments.

Click here to enter text.

Sample

Hearing Report and Summary

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule. If no comments were incorporated, explain why not.

Click here to enter text.

Sample