

JOINT COMMITTEE ON AGENCY RULE REVIEW (JCARR)

# PROCEDURE MANUAL



Larry Wolpert

Executive Director

77 S. High Street

Columbus, Oh 43215

614-466-4086

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## **1. What is the Joint Committee on Agency Rule Review?**

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](http://www.jcarr.state.oh.us). The committee's primary function is to review proposed new, amended, and rescinded rules from over 110 state agencies to ensure they do not exceed their rule making authority granted to them by the General Assembly.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, 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. What is 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](mailto:erfhelpdesk@lsc.state.oh.us).

### **4. What is 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/](http://www.registerofohio.state.oh.us/).

### **5. What is the Rule Summary and Fiscal Analysis (RSFA)?**

Ohio law requires the Rule Summary and Fiscal Analysis Part A (RSFA) 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(a), the rule filing agency must also complete an “Environmental Rule Adoption / Amendment Form.” 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 the Environmental form can be found in Appendix C.

## **6. What is 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 of business. When an agency is drafting a rule or a five year no-change review rule (see #7) 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 agencies are exempt from CSI review). 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. If you need to contact the CSI office for more information, they can be reached at (614) 466-3396.

## **7. What is a five year rule review (FYR)?**

Ohio law (O.R.C. 119.032) 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. 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.

## **8. What are 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 (see #9). 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 (see #9). 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.

## **9. 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. 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 35<sup>th</sup> 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 50<sup>th</sup> day of JCARR's 65 day jurisdiction. JCARR's jurisdiction would be extended to the 80<sup>th</sup> day from the rule's original filing date.

## **10. What is To Be Refiled (TBR)?**

To Be Refiled (TBR) is term agencies use to tell JCARR they plan to revise file or refile their rule. When the agency commits to TBR the rule at a later date, 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.

## **11. What is Incorporation by Reference?**

When rules are created by state agencies many times they will incorporate forms, applications, laws or standards from organizations into the rule. Instead of transcribing the entire incorporated language into the rule, Ohio law permits the agency to "reference" the incorporated language in the rule. The incorporated item has the full effect of administrative law and is subject to legislative oversight. There are two ways an agency can incorporate text. They can incorporate by indicating the referenced text or material in the rule and explain where persons who are affected by the rule can obtain copies of the referenced material or text. If the incorporated

material is subject to change, the agency must also indicate the material's version, edition or date. The other way an agency can incorporate material by reference is by citation. For example, if a rule incorporates a section of the United States Code, the agency would simply list the code's section number in the rule. If the cited material in the rule can be expected to change, the agency must indicate the citation's date, edition or version. Incorporation by reference requirements do not apply to Ohio Revised Code referenced sections, Ohio un-codified statutes, Ohio Administrative Code rules, agency internal management rules, rules to maintain a federally delegated program, and rules for complying with federal government requirements to receive federal program funds.

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.

## **12. What is 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.

## **13. 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 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.

#### **14. What is an 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 (see #13), 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 90 days. In most cases the agency will file a non-emergency permanent rule with JCARR about the same time, so when the 90 day 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" (see #22) which causes the permanent rule's effective date to exceed the 90 day emergency rule. In this case the Governor has the authority to issue a second 90 day emergency rule executive order. The other exception is if the permanent rule going through the JCARR process is ordered (see #19) by the JCARR committee to correct the rule's RSFA, and the delay would cause a lapse between the permanent rule's effective date and the emergency rule's expiration, 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 (see #13), 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.

#### **15. Processing a new, amended or rescinded rule.**

The agency starts the process by filing the rule in the ERF System (see # 3). 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 (see # 21). If the processor determines the rule creates an adverse impact on business and the agency did not send the rule to CSI (see # 6), 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 (see #10) 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, 121.75, or 121.76?
- 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 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 #10) 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.

## **16. 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. Before filing the rule on the ERF System (see #3) the agency must review the rule under the following standards to see if the rule should be modified:

- Should the rule be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope and intent of the statute under which the rule was adopted.
- Should the rule be amended or rescinded to give more flexibility at the local level.
- Whether the rule needs amendment or rescission to eliminate unnecessary paperwork.
- Whether the rule incorporates a text or other material by reference and, if so, is the incorporation in compliance with the required procedures and standards stated in O.R.C. 121.72, 121.74, 121.75 or 121.76.
- Whether the rule duplicates, overlaps with or conflicts with other rules.
- Whether the rule has an adverse impact on business (see # 21), and if it does has the adverse impact been reduced or eliminated.
- In making the review of the rule the agency shall consider the continued need for the rule, the nature of any complaints or comments concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.

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. A no-change literally means nothing in the

rule needs to be changed. The JCARR office receives the filed rule via an email. The JCARR rule processor prints the rule and places it in a file. The processor will triage the rule within 48 hours to see if the rule has an adverse impact on business (see #21). If the rule has an adverse impact on business and it did not go to the CSI office (see #6), the processor 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). The rule processor will then review the rule to ensure that none of the five year no-change standards have been violated. If one of the standards has been violated, the processor 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.

### **17. 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 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.

### **18. Invalidating a rule for missing its five year review.**

Ohio law requires most agencies must 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 #7). 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.

### **19. What is a “Finding and Order?”**

Instead of recommending invalidating a rule for an incomplete or inaccurate RSFA Part B (Local Government Fiscal Impact), Ohio law permits the JCARR committee to issue a “finding and order” that directs an agency to complete or correct its RSFA Part B. (Please note the “finding and order” procedure only applies to questions in the RSFA’s Part B and it can only be used once in the rule’s review process.) At a JCARR committee meeting if a member believes the RSFA Part B is incomplete or inaccurate, the member will make a motion for the agency to revise the RSFA Part B and refile it with JCARR. This is called a “finding and order.” The motion may indicate a deadline when the agency must revise file the rule with JCARR. 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, JCARR will electronically send a “finding and order” certification notice to the agency, Secretary of State, and the Director of LSC. When the “finding and order” is issued, the agency is prohibited from continuing the rule making process until the agency refiles the rule with JCARR. When the rule is refiled and the JCARR committee believes the RSFA Part B is complete and accurate, JCARR will issue an electronic order to the agency, Secretary of State, and the Director of LSC indicating the RSFA is complete and accurate. The agency may then proceed to adopt the rule. If JCARR determines the revised RSFA Part B is still inaccurate or incomplete, the JCARR committee shall recommend a concurrent invalidation resolution.

### **20. 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 1<sup>st</sup> and the extension request was submitted and approved on July 1<sup>st</sup>, the six month extension would end on December 1<sup>st</sup> not January 1<sup>st</sup>. The agency can also

request an extension for less than six months. (An extension request example letter is on the JCARR website).

## **21. 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, or
- Requires a specific expenditure or the report of information as a condition of compliance.

If the rule has one of the above, the rule must first be sent to the Common Sense Initiative Office (see # 6) 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.

## **22. What is December Carry-Over?**

Ohio law requires when a rule is original filed, revised filed or refiled in December, the JCARR jurisdiction clock (see #8) 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, revised or refiles a rule on December 15<sup>th</sup> and the first session day of the new year is January 4<sup>th</sup>, the JCARR 65 day jurisdiction clock would start on January 4<sup>th</sup>. Please note a refiled rule normally has a 30 day JCARR jurisdiction extension and a revised filed rule has no JCARR jurisdiction extension, but because it was refiled or revised filed in December, Ohio law requires a 65 day JCARR

jurisdiction extension. 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.

### **23. What is RuleWatch Ohio?**

RuleWatch Ohio is a website created by JCARR that enables you to follow rule activity from over 110 state agencies. It is very easy to join RuleWatch. Just go to [www.rulewatchohio.gov](http://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.

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](http://www.jcarr.state.oh.us) or contact JCARR directly at (614) 466-4086.

## Appendix A

### Glossary of Definitions

#### §111 Rule

A §111 rule is promulgated and adopted pursuant to Section §111.15 of the O.R.C. §111 rules include any rule, regulation, bylaw, or standard, which is not a 119 rule, having a general and uniform operation and which is adopted by an agency under authority of the laws governing that agency. For the purposes of O.R.C. §111.15, a rule includes any appendix to a rule and internal management rules. The filing agency is not required to conduct a public hearing for rules filed pursuant to §111.15.

#### §119 Rule

A §119 rule is promulgated and adopted pursuant to O.R.C. §119.03 and §119.04 of the O.R.C. §119 rules include any rule, regulation, or standard having a general and uniform operation, adopted, promulgated, and enforced by an agency under the authority of the laws governing that agency. The rule includes any appendix to the rule but does not include any internal management rule of an agency unless the internal management rule affects private rights. The filing agency is required to conduct a public hearing on a rule filed pursuant to §119.03 between the 31st and 40th day of JCARR's 65-day jurisdiction.

**-A-**

#### Adopted Rule

A rule which has completed JCARR review, the §119 or §111 rule adoption processes, and has been final filed and assigned an effective date.

#### Amended Rule

A currently effective rule which has been submitted to JCARR for review of changes. The rule retains the same number, and contains deleted language, new language, or a combination of both.

### Amplify

A rule amplifies or implements a section of the O.R.C. if it expands upon, further details, or clarifies language in the statute.

### Authorizing Statute

A section of the O.R.C. that delegates to an agency the power to adopt or to promulgate rules.

### **-D-**

#### Department of Aging

The state agency whose role is to advocate for the needs of older citizens. Pursuant to O.R.C. §173.01, when an agency files an administrative rule that it expects to primarily affect persons sixty years of age or older, the agency must also submit a copy of that rule to the Department of Aging. (See O.R.C. §173.01)

### **-E-**

#### Electronic Rule Filing (ERF)

Electronic rule filing is the computer-based method by which rules are drafted and filed with JCARR, LSC, the Secretary of State, and when required, the Department of Aging. Electronic rule filing replaced the paper filing process as the exclusive filing method beginning April 1, 2002, pursuant to Am. Sub. S.B. 11 of the 123rd General Assembly.

#### Emergency Rule

A rule for which urgency requires immediate adoption, amendment, or rescission. Emergency rules can be either §111 or §119 rules and are in effect for 90 days from the date of filing. A §119 emergency rule requires an executive order from the governor that must be filed along with the emergency rule. Emergency rules are not subject to legislative review by JCARR.

#### 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 entity that provides support for rule filers. Rule filers can contact the ERF Help Desk to sign up for ERF training courses, to obtain answers to questions on how to file rules electronically, and for general advice and assistance with ERF. Phone Number: (614) 387-2078. E-mail: [erfhelpdesk@lsc.state.oh.us](mailto:erfhelpdesk@lsc.state.oh.us).

**-F-**

#### Final Filing

The proposed rule must be filed in final form with JCARR, the Secretary of State, and LSC after JCARR jurisdiction has ended. At the time a rule is filed in final form, the agency must assign to the rule an effective date, and when appropriate, a new five-year review date. The earliest a rule can be filed in final form is the day after JCARR's jurisdiction has ended.

#### Five-Year Review (FYR)

Five-year review requires an agency to review its administrative rules at least once during a five-year period. It was instituted in H.B. 473 of the 121st General Assembly in O.R.C. §119.032. The agency must determine the necessity for changes to the rule or for the rules' continued use, utilizing the specific criteria found in O.R.C. §119.032.

**-I-**

Incorporation by Reference

An agency incorporates a text or other material into a rule by reference when it states in the rule that a text or other material not contained in the rule is to be treated as if it were contained in the rule. (See O.R.C. §121.72.).

Internal Management Rule

Any rule that governs the day-to-day staff procedures and operations within an agency. Internal management rules are not subject to legislative review by JCARR.

**-J-**

JCARR

The Joint Committee on Agency Rule Review. One of the governmental entities with which statute requires rules to be filed electronically. JCARR is the legislative committee that reviews proposed new, amended, rescinded and no change rules. The JCARR office is located at 77 S. High St., Concourse Level, Columbus, OH 43215. Phone Number: (614) 466-4086  
Website: [www.jcarr.state.oh.us](http://www.jcarr.state.oh.us).

JCARR Meeting

JCARR meetings are conducted approximately every three weeks to hear testimony and, if necessary, take committee action on both proposed original and no change rules that are currently within the committee's jurisdiction. JCARR asks agencies that have rules scheduled on a JCARR meeting agenda to have a representative present to answer any questions that arise. Please consult the JCARR website or contact the JCARR office to confirm the date, time, and location of future JCARR meetings.

**-L-**

LSC

The Legislative Service Commission. One of the governmental entities with which statute requires rules to be filed electronically. The Ohio Legislative Service Commission provides

technical, research, and fiscal services to members of the Ohio General Assembly. The LSC Administrative Rules Unit is located at 77 S. High St., 8th Fl., Columbus, OH 43215. Phone Number: (614) 387-2078. Website: [www.lsc.state.oh.us](http://www.lsc.state.oh.us).

**-N-**

#### New Rule

A rule with a rule number not currently in effect or a rule number currently in effect but being rescinded and replaced with the new rule. All text of a new rule is underlined.

#### No Change Rule

A “no change” rule is a rule filed pursuant to O.R.C. §119.032, in which no changes are being made to the text of the rule. Once a no change rule is filed, JCARR has jurisdiction over it for a 90-day period. The filing agency is not required to conduct a public hearing for no change rules. No change rules are posted by JCARR for four consecutive weeks from the date of filing in the Weekly Public Notice Report, which can be found on the JCARR website.

**-O-**

#### O.A.C.

Ohio Administrative Code—the compilation of administrative rules adopted by the administrative agencies of the State of Ohio. A link to the O.A.C. is available at the JCARR website: [www.jcarr.state.oh.us](http://www.jcarr.state.oh.us)

#### O.R.C.

Ohio Revised Code—the compilation of the codified law of the State of Ohio. A link to the O.R.C. is available at the JCARR website: [www.jcarr.state.oh.us](http://www.jcarr.state.oh.us).

#### Original Rule Filing

The initial filing of a rule, whether amended, new, or rescinded, under sections §111.15 or §119.03 of the O.R.C. for the 65-day review by JCARR. The 65-day review period is computed by excluding the day the original filing is made and including the last day. Barring no action (e.g.

refile) that would extend JCARR's jurisdiction over a proposed rule; an originally filed rule can be filed in final form on or after the 66th day from the date of filing.

**-P-**

Proposed Filing/Rule

Any rule that has been originally filed with JCARR, LSC, and the Secretary of State, but which has not yet been final filed and assigned an effective date.

Public Hearing

A required hearing conducted by the filing agency to allow individuals and organizations from the public the opportunity to offer comments and testimony on proposed rules. For all rules originally filed pursuant to O.R.C. §119.03, the filing agency must conduct a public hearing between the 31st and 40th day from the date that the rules are originally filed with JCARR, LSC, and the Secretary of State. A notice of the agency's public hearing must be given in the Register of Ohio at least 30 days prior to the scheduled date of the public hearing and must accompany the original proposed rule filing. It is important to note that the public hearing is held by the agency prior to and separate from the JCARR meeting.

**-R-**

Refiled Rule

A rule that is modified more than 35 days after the original filing and prior to being filed in final form. Once a rule is refiled, JCARR has jurisdiction over the rule for 30 days from the date the rule is refiled. The refiled version of the rule supersedes all earlier versions of the rule that have not been filed in final form. The 30-day jurisdiction is computed by excluding the refiling date and including the last day. Refiled rules can be filed in final form only on or after the 31st day of the refiled jurisdiction.

Register of Ohio (ROO)

Maintained by the LSC, the Register of Ohio publishes agency rule-making documents required by statute in electronic form on its internet site. The Register is intended to be "an electronic publication that functions as a gazette to which members of the public may readily resort for

notice of and information about rule-making processes.” The Register of Ohio can be accessed at [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us) or via a link from the JCARR website: [www.jcarr.state.oh.us](http://www.jcarr.state.oh.us).

### Renumbering a Rule

If an agency wants to renumber an existing rule, both JCARR and LSC prefer that this be accomplished by rescinding the existing rule and enacting the old language as a new rule with the new number.

### Rescinded Rule

The revocation, repeal, cancellation, or voiding of a rule. The rescission of a rule is proposed for the same 65-day review period as amended and new rules.

### Revised Rule

A rule that is modified within the first 35 days after the original filing of that rule. The filing of a revised rule does not extend the 65-day review period. The revised rule supersedes each earlier version of the rule filed with JCARR for review.

### RSFA

Rule Summary and Fiscal Analysis—the document that must be filed with the text of each rule (except emergency rules). The RSFA contains a series of questions regarding the statutory and fiscal information of the rule. (See O.R.C. §127.18.).

**-S-**

### Secretary of State

One of the governmental entities with which statute requires rules to be filed electronically. The Secretary of State is located at 180 E. Broad Street, 16th Floor, Columbus, OH 43215, Phone Number: (614) 466-2655. WEBSITE: [www.sos.state.oh.us](http://www.sos.state.oh.us).

### Substantive Revisions

According to O.R.C. §119.01, a substantive revision is any addition to, elimination from, or other change to a rule, rule amendment, or rule rescission, that permits, authorizes, regulates,

requires, prohibits, penalizes, rewards, or otherwise affects the scope or application of the rule, amendment, or rescission. All substantive changes in a proposed rule must be made electronically by revising or re-filing the rule.

**-T-**

To Be Refiled (TBR)

A rule that has been temporarily removed from JCARR consideration by the rule-making agency. A rule is removed from a JCARR agenda by submitting electronic notification to JCARR and LSC that states the agency's intention to refile the rule(s) at a later date. Once the rule-making agency refiles the rule(s), JCARR has jurisdiction over the rule for 30 days from the date the rule is refiled.

**-W-**

Withdrawn Final Filing

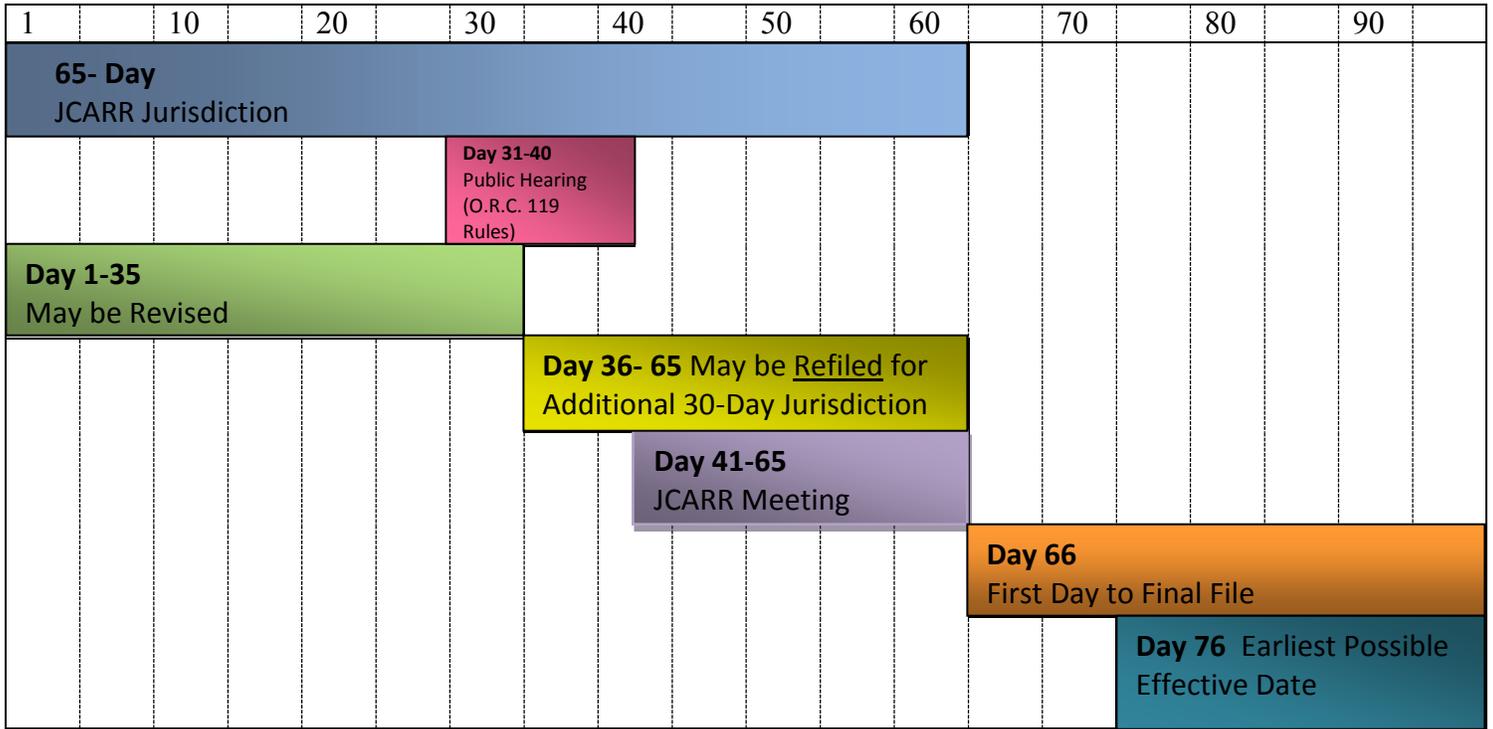
A proposed rule that has been withdrawn after it has been final filed. This action only withdraws the final filed rule and not the proposed rule.

Withdrawn Proposed Rule

A proposed rule that has been removed from JCARR consideration by the rule-making agency prior to final filing. The withdrawal of a rule shall be by electronic notification to JCARR, LSC, and the Secretary of State. Withdrawal of a rule withdraws all previous versions of that rule number currently before JCARR. Withdrawal of proposed modifications returns the rule to its previous status.

## Appendix B

### JCARR Rule Processing Timelines



### JCARR No Change Rule Processing Timeline



Appendix C

**Rule Summary and Fiscal Analysis (Part A)**

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Division

\_\_\_\_\_  
Contact

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

\_\_\_\_\_  
Agency Mailing Address (Plus Zip)

\_\_\_\_\_  
Email

\_\_\_\_\_  
Rule Number

\_\_\_\_\_  
TYPE of rule filing

\_\_\_\_\_  
Rule Title/Tag Line

\_\_\_\_\_

**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review?

2. Are you proposing this rule as a result of recent legislation?

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule:

4. Statute(s) authorizing agency to adopt the rule:

5. Statute(s) the rule, as filed, amplifies or implements:

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

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13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations?

If Yes, you must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with An. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39?

If Yes, you must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub.106 of the 121st General Assembly.

### ***S.B. 2 (129th General Assembly) Questions***

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18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82?

19. Specific to this rule, answer the following:

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?

**Rule Summary and Fiscal Analysis (Part B)**

1. Does the Proposed rule have a fiscal effect on any of the following?
  - (a) School Districts
  - (b) Counties
  - (c) Townships
  - (d) Municipal Corporations
  
2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.
  
3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement?
  
4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.
  
5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.
  - (a) Personnel Costs
  
  - (b) New Equipment or Other Capital Costs
  
  - (c) Operating Costs

(d) Any Indirect Central Service Costs

(e) Other Costs

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

7. Please provide a statement on the proposed rule's impact on economic development.

SAMPLE

**Environmental Rule Adoption/Amendment Form**

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 ?

(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 ?

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.)

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

- (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?

SAMPLE