

Guide to Rule Making

Before discussing rule making, it is important to understand that the Ohio Revised Code is statutory language set forth by the legislature and changes to the Revised Code can only be made through the legislative process. The Ohio Administrative Code is rules formulated to further interpret the statute. Rules have the same force and effect of the statute.

The Board formulates and adopts rules to govern its actions and the practice of chiropractic. Rules must be adopted according to the procedures outlined in ORC Section [119](#). Any proposed rule, or rule amendment or rescission is discussed in open session at regularly scheduled Board meetings.

Before further explaining the rule-making process, it is important to understand the role of two key agencies in the rule making process: 1.) The Common Sense Initiative Office and 2.) the Joint Committee on Agency Rule Review.

1. [Common Sense Initiative Office \(CSIO\)](#)

The CSIO was established in 2011 by Governor Kasich to create a regulatory framework that promotes economic development, is transparent and responsive to regulated businesses, makes compliance as easy as possible, and provides predictability for businesses. Any rule determined to have an adverse impact on business must be reviewed by the CSIO.

Adverse Impact is defined in ORC § [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 its terms; or
- ✓ Requires specific expenditures or the report of information as a condition of compliance.

*Many of the Board's rules meet the definition of having an adverse impact on business. When a rule is determined to adversely impact business, the Board must notify stakeholders (ie., licensees, students, colleges, consumers, etc.) of the Board's intention to adopt, review, amend, or rescind a rule and provide an opportunity for stakeholders to comment on the rule within a certain timeframe *before* the Board can make a determination as to the action to be taken on the rule.

Once the Board has received and considered all stakeholder comments it will finalize a draft of the rule. The Board must then complete a [Business Impact Analysis Form](#) (BIA) for the rule and file it with the CSIO office. The BIA form is required by the CSIO to help those affected determine if the Board balanced the critical objectives of its rules with the cost of compliance and if the Board promoted transparency, consistency, predictability, and flexibility in its regulations. The Board is required to notify stakeholders of the proposed rule(s) and provide a copy of the BIA Form so that stakeholders can provide comment on the rule(s) to the CSIO office. The CSIO office will review the rule and stakeholder comments and provide a recommendation to the Board. Not only is the Board required to respond to the CSIO's recommendations, the Board must abide by the CSIO's recommendations on its proposed rules. Should the Board need to make changes to a proposed rule based upon the CSIO's recommendation, a second round of stakeholder comment and new BIA form may be necessary.

*If a rule is deemed not to have an adverse impact on business, the CSI process is not followed and the Board proceeds accordingly.

2. [Joint Committee on Agency Rule Review \(JCARR\)](#)

JCARR is a committee created in 1977 by the General Assembly (GA) and consists of five State Representatives and five State Senators. The committee's primary function is to review proposed new, amended, no change, and rescinded rules from state agencies to ensure an agency does not exceed its rule making authority granted by the GA. 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. JCARR does not write or approve rules. JCARR can only make recommendations to invalidate a rule.

JCARR specifically looks for the following when reviewing rules:

- 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 ORC sections [121.72](#), [121.75](#) or [121.76](#)?
- If the rule has an adverse impact on business, has the rule-making agency demonstrated through the BIA, the CSI Office recommendations and the agency's response to the CSI recommendations, that the regulatory intent of the rule justifies its adverse impact on business?

A Rule is Reviewed, Created, Amended or Rescinded When:

- (1) *A rule is up for Five Year Rule Review;
- (2) New legislation is enacted that requires a new rule, or amendment or rescission of an existing rule;
- (3) The Board finds it necessary to amend, rescind or file a new rule to clarify existing language.

***Five Year Rule Review**

The Board is required by law to review each of its rules every five years to determine whether to continue without change, amend or rescind a rule. You can find review dates in the tag line at the end of each rule.

Public Rules Hearing

When the Board proposes to adopt a new rule or amend or rescind an existing rule, a Public Rules Hearing must be conducted to allow individuals and organizations the opportunity to offer comment and testimony on the proposed rule. The Board notifies stakeholders of the hearing and publishes a hearing notice on its website. (A public rules hearing is not required for rules filed with no changes as a result of the Five Year Rule review process.)

What Happens During a Public Hearing?

On the date, time and place designated, the Board will conduct a public hearing on the proposed rule action(s). The hearing may be held by or before the full Board, a designated Board member or an attorney hearing officer.

Any person affected by a proposed rule(s) may:

- Appear and be heard in person, by the person's attorney, or both;
- Present his or her positions, arguments, or contentions, orally or in writing;
- Offer and examine witnesses;
- Present evidence tending to show that the proposed action, if adopted or effectuated, would be unreasonable or unlawful.

The testimony at the hearing may be recorded by a court reporter at the expense of the Board. The Board may permit persons affected by the proposed action to present their positions, arguments or contentions in writing, for a reasonable period before, after, or both before and after the hearing. Any person who wishes to present his or her position, arguments or contentions in writing before or after the hearing is not required to appear at the hearing.

Upon closure of the hearing record, the Board thoroughly reviews and considers all testimony and votes on proceeding accordingly. [A Hearing Summary Report](#) (HSR) is prepared as required

by JCARR. The HSR must include a list of all organizations or individuals that presented testimony, a consolidation of the comments received and an explanation of how comments received were incorporated into the rule, or if no comments were incorporated, an explanation of why not.

Based on testimony received, the Board may make changes to a rule. If the Board makes changes to a rule based upon testimony received at the hearing, a second public hearing notice is not required unless the change in the rule makes the rule inconsistent with the public hearing notice provided with the original rule filing.

After the Rules Hearing

The Board files the rule with JCARR (and the Legislative Service Commission and Secretary of State as required by law). A hearing is held before the JCARR committee. Anyone may testify before JCARR. Upon conclusion of the JCARR hearing, the Board may file the rule for formal adoption unless otherwise advised by JCARR. Once JCARR's jurisdiction ends, the rule is given an effective date and a new five year rule review date. To be added to the JCARR notification list, register at:

<http://www.jcarr.state.oh.us/about-jcarr/jcarr-mailing-list;jsessionid=c9c63af210a4273d4be5b7f22d2b?0>

Rule Filing Steps

The following is an illustration of the rule filing process. If a rule does not have an adverse impact on business, steps 1-4 are omitted (once the Board determines whether to amend, rescind or leave the rule unchanged) and the rule is filed directly with JCARR, the Legislative Service Commission and the Secretary of State's Office.

