

GUIDE TO PUBLIC PARTICIPATION IN RULE MAKING



OHIO SPEECH AND HEARING PROFESSIONALS BOARD
77 South High Street, 16th Floor
Columbus, OH 43215
shp.ohio.gov
board@shp.ohio.gov

September 2019

MISSION

The Mission of the Ohio Speech and Hearing Professionals Board is to protect consumers by regulating the practice of audiology, hearing aid dealing, fitting and dispensing, and speech-language pathology by establishing, promoting, and enforcing practice standards and professional competency among licensees pursuant to Chapters 4744, 4747, and 4753 of the Ohio Revised Code and Ohio Administrative Code.

BOARD ORGANIZATION

The Board members are comprised of three audiologists, two hearing aid fitters, two speech-language pathologists and two public members. Members are appointed by the Governor to three-year terms and are eligible to be re-appointed up to three consecutive terms. The staff consists of four full time employees (Executive Director; Licensing Coordinator; Investigator and an Administrative Professional.)

THE RULE MAKING PROCESS

Rulemaking and rule reviewing are complicated processes governed by several Ohio statutes and involves many state agencies. Ohio [law](#) requires the Board to publish this guide to explain the basic process of rule-making, focusing on opportunities for stakeholders to participate in the Board's review, formulation, amendment, or rescission of administrative rules governing audiology, hearing aid fitters and speech-language pathology in Ohio. For more detailed information, please refer to the applicable links provided in this Guide for agency information, forms, laws, and resources.

The laws governing audiology, hearing aid dealing, fitting and dispensing, and speech-language pathology in Ohio has two components:

STATUTES

Enacted by the General Assembly and are codified in the Ohio Revised Code (ORC). The Board's statutes are contained in Ohio Revised Codes [4744](#), [4747](#) and [4753](#)

RULES

Enacted by the Board and are codified in the Ohio Administrative Code (OAC). Rules provide detail that clarify and amplify the provisions of the Ohio Revised Code and have the force and effect of law. Rules cannot change the provisions of, or exceed the scope of authority, in the Ohio Revised Code. The Board's rules are contained in Ohio Administrative Code Chapters [4744](#), [4747](#) and [4753](#).

Ohio's statutes and administrative rules can be searched on the [Lawriter](#) website.

Before discussing the rules review-making process, it is important to understand the reasons the Board conducts rules activities and the function of two important entities and their role in the rule making/review process – the [Common Sense Initiative Office](#) and the [Joint Committee on Agency Rule Review](#).

WHY DOES THE BOARD CONDUCT RULES ACTIVITY?

The Board initiates the rule making process to [adopt new rules, amend rules, or rescind rules](#), or because of a required [Five Year Rule Review](#).

WHAT IS A FIVE YEAR RULE REVIEW?

Ohio law requires the Board to review each of its rules every five years to determine whether to keep the rule as written, or amend, or rescind the rule. This review ensures the Board considers the purpose, scope and intent of each rule every five years. You can find the review date of any rule by searching for the rule in [Lawriter](#). Once you find the rule, scroll to the end of the rule and you will see lines of text, which will include the next review date (i.e., Five Year Review (FYR) Dates: 01/01/2022). You may also contact the Board office to inquire about the review date of any rule.

When reviewing a rule, the Board must consider:

- The continued need for the rule.
- The nature of any complaints received concerning the rule.
- Any relevant factors that may have changed in the subject matter affected by the rule.
- Whether the rule should 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.
- Whether the rule needs amendment or rescission 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.
- Whether the rule duplicates, overlaps with, or conflicts with other rules.
- Whether the rule has an adverse impact on businesses.
- Whether the rule contains words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive.
- Whether the rule requires liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

No Change Rule

If after reviewing a rule the Board determines to leave it unchanged, it is called a "[No Change Rule](#)" and the Board is not required to hold a public hearing. However, the Board must still file the rule with JCARR and comply with the requirements of the CSIO if the rule adversely affects business.

COMMON SENSE INITIATIVE OFFICE (CSIO)

The [CSIO](#) was established 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. Ohio law requires the Board to first determine if a rule has an adverse impact on business whenever it conducts rules activity. A rule affects businesses has an adverse impact if a provision of the rule that applies to businesses has any of the following effects:

- 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;
- Requires specific expenditures or the report of information as a condition of compliance; or,
- Would likely to directly reduce the revenue or increase the expense of business.

Any rule deemed to have an adverse impact on business requires “early stakeholder input” to seek input on what, if anything, the Board should do with the rule. The Board must consider the stakeholder feedback received prior to reviewing a rule, drafting a rule for adoption, or considering amendment or rescission of a rule. Once the feedback has been reviewed, the Board must then file the proposed rule action with the CSIO for review. (Several rules may be submitted in one “package” to the CSIO.) All rules that fall under CSIO review must include a form called a “[Business Impact Analysis](#)” (BIA) that describes in detail the impact the rule has on business/stakeholders and includes a synopsis of all stakeholders included in the review or development of the rule and the input that was provided. When the Board files a rule and BIA with the CSIO, stakeholders are notified of the opportunity to comment on the proposed rule action to the CSIO.

The CSIO will review the rule, the BIA, and stakeholder comments. (Many times, the CSIO assists the Board and stakeholders to come to a resolution regarding issues of interpretation, disagreement, etc.) The CSIO will make a formal recommendation as to the Board’s proposed rule action. If the CSIO has any suggestions to reduce or eliminate the rule’s adverse impact on business, they will send the Board a memo with the recommendations. If there are no recommendations, the CSIO will send a memo to the Board acknowledging the review is complete. The Board must confirm receipt of, and abide by, the recommendations made in the memo. The Board cannot proceed with the rules process until the CSI process is complete.

STAKEHOLDERS

A stakeholder is any person or business affected by the rules of the Board. All current licensees are considered stakeholders and automatically receive communications regarding rules activity. Any other individual who wishes to receive notification of the Board’s rules actions may join the Board’s listserv at: <https://shp.ohio.gov/listserv>.

Ohio Business Gateway (OBG) Regulatory Reform eNotification

To receive notifications about draft rules in specific areas of interest, any person may sign up for the eNotification system through the Ohio Business Gateway. When a draft rule is proposed in the area for which the person has signed up, an email alert will be sent describing the rule with

links for access to more information and to comment on the rule. Comments will go to the agency proposing the rule and to the CSIO and will be considered before the CSIO makes any recommendations to the agency and before the agency files the rule with JCARR.

JOINT COMMITTEE ON AGENCY RULE REVIEW (JCARR)

The Joint Committee on Agency Rule Review (JCARR) is a committee consisting of five State Representatives and five State Senators whose primary function is to review proposed new, amended, rescinded, and five year rule review rules to ensure agencies do not exceed the rulemaking authority granted by the General Assembly. Ohio law requires the Board to file all rules with JCARR.

JCARR has a specific time frame to review rules. JCARR has 65 days to review new, amended or rescinded rules and 90 days to review 5 year No Change Rules. JCARR reviews each rule to verify the Board has the authority from the General Assembly to write the rule, and to determine if a rule violates one of the following JCARR standards:

- Does the rule exceed the Board's statutory authority?
- Does the rule conflict with an existing rule of the Board or another state agency?
- Does the rule conflict with legislative intent?
- Did the Board prepare a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission?
- Has the Board met the incorporation by reference standards for a text or other material as stated in ORC sections [121.72](#), [121.73](#), [121.74](#) or [121.75](#)?
- If the rule has an adverse impact on business, has the Board demonstrated through the BIA, the CSIO recommendations, and the Board's memorandum of response to the CSIO recommendations, that the rule's regulatory intent justifies its adverse impact on business?

After reviewing a rule to determine if it violates any of the above standards, JCARR will hold a public hearing. If the JCARR committee determines the Board has exceeded its authority, it could recommend the adoption of a concurrent resolution to invalidate the entire rule or parts of the rule.

Any person may testify before the JCARR committee. Visit this [link](#) to be added to the JCARR hearing notification list.

JCARR's [Procedure Manual](#) is an excellent source of information for understanding Ohio's rules procedures.

OPPORTUNITIES FOR STAKEHOLDERS TO PARTICIPATE IN THE RULES PROCESS

If a rule has an adverse impact to business, Steps 1-4 apply. If a rule does not have an adverse impact on business only Steps 3-4 apply.

1. Early Stakeholder Input

When the Board initiates the rules process, an email communication is sent to stakeholders notifying of the opportunity to provide feedback to the Board. This is early outreach to seek input on what, if anything, the Board should do with a rule. The Board will consider the stakeholder feedback received prior to reviewing a rule, drafting a rule for adoption, or considering amendment or rescission of a rule.

2. Comment to the Common Sense Initiate Office (CSIO)

Once the Board reviews and considers any early stakeholder input received, the proposed rule action is prepared, and stakeholders will receive a second email with a copy of the draft rule and notification of the Board's intended action with the rule. This notification provides all stakeholders an opportunity to comment on the proposed rule action to the CSIO and the Board and will include a Business Impact Analysis form that describes the impact of the rule.

3. The Board Holds a Hearing

The Board will hold a public hearing on all proposed rules actions (except for 5 year No Change Rules which do not require a public hearing). Notification of the date, time and place of the hearing will be emailed to all stakeholders at least 30 days prior and will also be posted on the Board website and in the [Register of Ohio](#). A copy of the hearing notice and full text of the proposed rule(s) will also be available at the Board's office.

The hearing notice will include:

- A statement of the Board's intention to consider adopting, amending, or rescinding the rule.
- A synopsis of the proposed rule, amendment, or rule to be rescinded, or a general statement of the subject matter to which the proposed rule, amendment, or rescission relates.
- A statement of the reason or purpose for adopting, amending, or rescinding the rule.
- The date, time and place of the hearing.

Any person affected by the proposed rule action may:

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

The Board may permit persons affected by the proposed rule, amendment, or rescission to present their positions, arguments, or contentions in writing, for a reasonable period before, after, or both before and after the hearing. A person who presents their position or 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 will thoroughly review and consider all testimony and may make changes to a rule based on testimony received. (If the Board makes changes to a proposed rule, a second public hearing notice and hearing is not required unless the change makes the rule inconsistent with the hearing notice provided with the original notice.) After its review and consideration of the hearing record, the Board is required to file a Hearing Summary Report with JCARR that lists all organizations or individuals that presented testimony at the Board's hearing and summarizes all comments received during the public hearing process.

4. JCARR Hearing

JCARR will hold a hearing on the proposed rule action where anyone may testify. Upon conclusion of the JCARR hearing, the Board may file the rule for formal adoption unless otherwise advised by JCARR.

FORMAL ADOPTION/EFFECTIVE DATES

Prior to the effective date of a new rule, amended rule, or rescission, the Board will make a reasonable effort to inform those affected, including those who provided evidence or testimony that was made part of the Board's public hearing. Notification is made by sending an email to all stakeholders and posting the rule on the Board's web site.

CONCLUSION

Please contact the Board office if you have any questions regarding rulemaking, rule reviewing and/or how you may participate in the process:

shp.ohio.gov
board@shp.ohio.gov