



The State of Ohio
**Board of Executives of
Long Term Services & Supports**

50 West Broad St., 9th Fl
Columbus, OH 43215
Telephone: 614-466-5114
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John R. Kasich, Governor • Michael J. Scharfenberger, Chairman • Deborah Veley, Executive Director

Fact Sheet: Rule Making

This guide is intended to help members of the public who participate or wish to participate in the rule-making process of the Ohio Board of Executives of Long-Term Services and Supports (BELTSS).

On January 10, 2011, Governor Kasich signed Executive Order 2011-01K, creating the Common Sense Initiatives (CSI) Office under the authority of Lieutenant Governor Mary Taylor. The executive order outlines specific principles that should be prioritized in the development and review of agency regulations. CSI 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.

On March 4, 2011, Governor Kasich signed into law Senate Bill 2, which codified much of Executive Order 2011-01K. Senate Bill 2 changed the procedure for promulgation of agency rules and expanded the jurisdiction of the Joint Committee on Agency Rule Review (JCARR). Under Senate Bill 2, rules that might have an adverse effect on business is subject to additional analysis by the agency proposing them, the CSIO, and JCARR.

Rule-making Requirements and Authorization

The Ohio Revised Code (ORC) requires and authorizes the Board to adopt administrative rules. Rules are adopted pursuant to Chapter 119 of the ORC, and become part of the Ohio Administrative Code (OAC). The Board may also adopt internal management policies and practices.

What is a rule?

A rule is a regulation or standard which is adopted, promulgated, and enforced by any Ohio agency under the authority of the laws governing the agency. For BELTSS, Chapter 4751 of the ORC provides the statutory authority for any rule adopted.

Rule-making Process: Drafting, Review, and Early Stakeholder Outreach

The first step in the rule making process is for the Board to identify a rule that needs to be amended, rescinded, or created. There are many different reasons to change a rule, including changes to state and/or federal law, a five-year review, a limited change, and a quick change.

Examples of changes to state law include the recent HB 59, which changed the Board's name. Since the change is written into the law, the Board's laws and rules may be changed to the extent required by the law without going through the formal rule-making process. Other state or federal law changes may make it necessary for the Board to make changes to its rules through the traditional rule-making process.

Chapter 119.032 of the Ohio Revised Code requires the Board to review each of its rules every five years to determine if the rule should be continued without amendment, be amended, or be rescinded. A schedule is created to ensure each rule is reviewed once every five years; however, a rule may be reviewed for potential revision by the Board at any time.



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Limited rule changes include modifications such as revisions to resolve difficulties with interpretation or application of the rule, as well as clarification of various aspects of the rule.

Examples of quick rule changes are making the language used consistent where possible (i.e. individual vs. person), correcting grammatical errors or making the language gender-neutral, or correcting an incorrect rule reference.

When a rule is scheduled for 5 year review or the Board proposes to create, rescind, or modify a rule, notification will be given by posting the information on the Board's website, notifying various stakeholder groups, and notifying any interested parties that have registered with the Board to receive such information. Interested individuals may register with the Board to receive this information by providing contact information via telephone or email. The notification will invite feedback from stakeholders and provide a deadline for input to be received.

If any comments are received, the Board will consider those comments when drafting the rule for filing with the Common Sense Initiative Office. The Board will not create an official response to stakeholders for these comments. If the Board feels additional outreach with stakeholders is necessary, it may hold stakeholder meetings and/or send out additional questions to stakeholders. This process does not suggest that the Board is required to send out drafts or negotiate rule language with stakeholders.

Interested Party Review

The interested party review process is designed to allow interested parties, stakeholders, or citizens to make comments regarding the rule prior to adoption. This review is conducted prior to filing the proposed rule with JCARR. JCARR consists of five State Representatives and five State Senators and is part of the Ohio Legislature. The Committee's main function is to review rules in accordance with Ohio laws.

When the draft rule is completed, it is again posted on the Board's website along with the completed Business Impact Analysis, and interested parties are notified that the draft is available for review. A deadline for submitting comments is set by the Board. The timeframe is generally 30 days but may be lengthened or shortened as needed.

Interested parties may register to receive notification through the State of Ohio's Rules E-Notification System at www.business.ohio.gov/reform/ or with the Board office as described above.

Consider Interested Party Comments

The Board collects, reviews, and considers each relevant comment, question, or concern received during the draft review period. Based on the comments received, the Board may revise the draft rules as appropriate. The time needed to review and incorporate the comments received varies depending upon the amount and complexity of the comments.

Submission of the Business Impact Analysis

The Board is required to send this analysis to the CSIO. The CSIO may either prepare and send recommendations to the Board for eliminating or reducing adverse impacts; or allow 16 days to pass without preparing and sending recommendations. If a recommendation is received from the CSIO, the Board will respond to the recommendations and work with the CSIO to resolve the issues. If 16 days pass, the rules can be filed with JCARR.



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Propose Rules to JCARR

When the draft rule is complete, it is filed with JCARR, the Secretary of State, and the Legislative Services Commission (LSC). The Secretary of State maintains a copy of the proposed rule, while JCARR reviews it to ensure that it is properly formatted and codified.

When the rule has been filed with JCARR, it is called a “proposed rule”. The Board submits a Rule Summary and Fiscal Analysis and the Business Impact Analysis with the proposed rule. These forms answer many questions regarding the content of the proposed rule, the legal basis for the rule, the adverse impacts to business, the estimated budgetary effect of the proposed rule, and the estimated cost of compliance by all directly affected persons.

The proposal to JCARR starts the 65 day JCARR jurisdiction. Within the first 31 to 40 days of that jurisdiction, the Board will hold a public hearing to provide an opportunity for anyone to provide oral or written testimony on the rule.

Public Notice, Comment Period, and Hearing

When the rule is proposed, the Board public notices the proposal and begins the formal public comment period. This period usually ends on the day of the public hearing. The Board conducts public hearings for all new, amended, and rescinded rules. A public hearing is the public’s opportunity to provide oral or written testimony for the record. Those who choose not to provide oral testimony are encouraged to submit their comments in writing. The Board considers all relevant comments when deciding whether to adopt, amend, or rescind a rule. Public hearing notices are posted on the register of Ohio’s website (www.registerofohio.state.oh.us) and the Board’s website.

Written and oral comments received during the public comment period receive the same consideration. The Board carefully reviews all submitted comments and may revise the proposed rule as appropriate.

JCARR Hearing and Jurisdiction

JCARR has 65 days to review the rule and ensure:

- the rules do not exceed the scope of the agency’s statutory authority;
- the rules do not conflict with another rule of the agency or another rule-making agency;
- the rules do not conflict with the intent of the legislature in enacting the statute under which the rule is proposed;
- the rule-making agency has prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission and, if the agency has incorporated text or other material by reference, the agency has met the standards stated in ORC sections 121.72, 121.75, or 121.76; and,
- the rule-making agency has demonstrated, through the business impact analysis, CSIO recommendations, and Memorandum of Response, that the regulatory intent justifies the adverse impact on business.

Within the last 41 to 65 days of JCARR jurisdiction, JCARR holds a hearing to accept comments on the proposed rule. Based on comments received, JCARR may take action to stop the adoption of the rule for the duration of that general assembly.



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Finalize the Rule

Following the 65 day JCARR jurisdiction, the Executive Director of the Board adopts the rule and establishes the date the rule becomes effective. The adoption of the final rule is public noticed in the Register of Ohio at www.registerofohio.state.oh.us and on the Board's website.

Emergency Rules

In extraordinary circumstances, the Board may bypass most of this procedure and adopt emergency rules. This requires an order of the governor finding that an emergency exists and suspending the normal procedural requirements of ORC Chapter 119. Emergency rules automatically expire after 90 days, unless, in the interim, the agency has gone through the normal Chapter 119 rule-making procedure.

Public Involvement

There are many opportunities for the public to participate in the rule-making process, including;

- signing up for the interested party list with the Board;
- signing up for the State of Ohio's Rules E-Notification System at www.business.ohio.gov/reform/;
- reviewing and commenting on draft rules;
- reviewing the rule proposal and public hearing notices;
- attending Board and JCARR public hearings.

Resources

- Joint Committee on Agency Rule Review – www.jcarr.state.oh.us
- E-Notification System – www.business.ohio.gov/reform/
- BELTSS – www.beltss.ohio.gov
- Register of Ohio – www.registerofohio.state.oh.us
- Common Sense Initiative Office – www.governor.ohio.gov/Prioritiesandinitiatives/CommonSenseInitiative