

GUIDE TO PUBLIC PARTICIPATION IN RULE MAKING



OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD

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MISSION

The mission of the Ohio OTPTAT Board is to actively promote and protect the health of the citizens of Ohio through effective regulation of the professions of occupational therapy, physical therapy, and athletic training.

BOARD ORGANIZATION

The Board is comprised of three sections that enforce the practice act of their respective profession. The Occupational Therapy (OT) Section consists of four occupational therapists and one occupational therapy assistant. The Physical Therapy (PT) Section consists of nine physical therapists. The Athletic Trainers (AT) Section has four athletic trainers and one physician. A Joint Board comprised of the the OT and AT sections and five PT members. An Orthotics, Prosthetics, and Pedorthics (OPP) Advisory Council advises the board on matters related to those professions. The staff consists of nine employees (Executive Director, Executive Assistant, Enforcement Division Supervisor, three Licensing Coordinators, one Investigator, one Investigator Assistant, an Office Assistant, and a part-time Office Assistant).

THE RULE MAKING PROCESS

Rules are important because they establish how the board conducts the business of regulating licenses. Rulemaking and rule reviewing is a process governed by several Ohio statutes and is designed to ensure transparency and public input. Ohio [law](#) requires the Board to publish this guide to explain the basic process of rule-making. Stakeholders can participate in the Board's review, formulation, amendment, or rescission of administrative rules governing the practice of OT, PT, AT, and OPP in Ohio.

The law governing the practice of OT, PT, AT, and OPP 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 Code Chapter 4755](#) and [Ohio Revised Code Chapter 4779](#).

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 Chapter 4755](#) and [Ohio Administrative Code 4779](#).

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

WHAT CHANGES CAN BE MADE TO RULES AND WHY?

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](#).” Rules may be initiated in response to statute changes or changes in the way the state does business.

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. You can find the review date of any rule by searching for the rule in [Lawriter](#). The five-year review (FYR) date is found at the bottom of each rule. 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.
- 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. If so, the text or material must be deposited or displayed as required by [ORC Section 121.74](#) or must meet the standards stated in [ORC Sections 121.72](#), [121.75](#) and [121.76](#).
- 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.
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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. The Board must still file the rule with JCARR and comply with the requirements of the Common Sense Initiative Office if the rule adversely affects business.

WHO IS INVOLVED IN RULE-MAKING IN OHIO?

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:

- It requires a license, permit, or any other prior authorization to engage in or operate a line of business;
- It imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action, for failure to comply with its terms; or
- It requires specific expenditures or the report of information as a condition of compliance; or
- It would likely 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. 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 [contact the Board](#) to request to be placed on the Board’s stakeholder email list.

[Ohio Business Gateway \(OBG\) Regulatory Reform eNotification System](#)

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 rule-making 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 has the ability to 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 Initiative 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 (with the exception of 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.

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. 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 rule-making, rule reviewing and/or how you may participate in the process:

www.otptat.ohio.gov
[Email](#)