

Joint Committee on Agency Rule Review

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2014

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Joint Committee on Agency Rule Review (JCARR) Legislative History

- JCARR was created in 1977 by House Bill 257
- House Bill 473 in the 121st Assembly added the requirement that JCARR review all existing rules every five years.
- Senate Bill 2 in the 129th General Assembly adds JCARR's 6th prong and creates CSI.

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What is the JCARR Committee

- It is a standing joint committee of 5 Senators and 5 House Members.
- The Committee is currently Chaired by Rep. Ross McGregor and the Vice Chair is Sen. Bob Peterson.
- The committee meets about every three weeks.
- All rules go through the committee and every rule is open for public testimony.

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JCARR Staff

Bill Behrendt
Senior Rules Analyst

Greg Fouche
Deputy Director

Ashley Frustaci
Rules Analyst

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Senior Rules Processor

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Who files Rules?

- There are over 110 different agencies, boards or commissions that file rules with JCARR.
- In any one year JCARR will review around 9,000 rules actions.

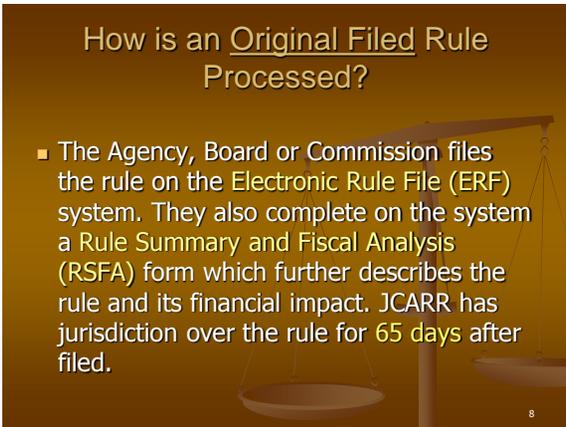
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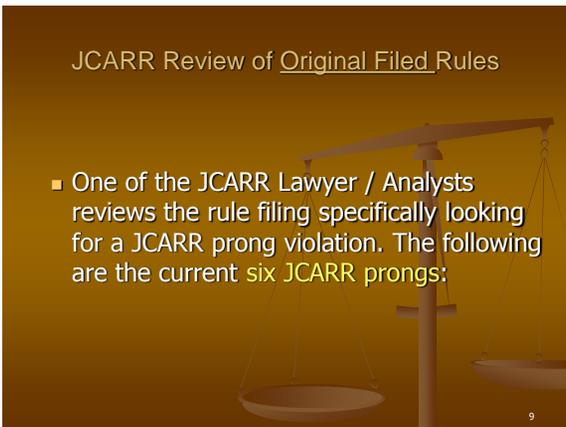
Types of Rules JCARR Reviews

- Original filed Rules (new, amended or rescinded rules)
- No Change Rules (5 year review) Note: since 1996 Ohio law requires existing rules be review by agencies every 5 years.

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Original Filed JCARR Prongs

1. Does the rule exceed the rule maker's statutory authority?
2. Does the rule conflict with an existing rule?
3. Does the rule conflict with legislative intent?
4. Did the rule maker prepare a complete and accurate Rule Summary and Fiscal Analysis?
5. If the rule maker incorporated text by reference, did they meet the required standards for incorporation?
6. If the rule has an adverse impact on business, did the rule maker demonstrate through the business impact analysis, CSI recommendations, and the memorandum of response that the regulatory intent of the rule justifies its adverse impact on business.

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What actions do we take when an Original Filed Rule JCARR prong violation is discovered?

- Our first approach is to apply what we call "speak softly and carry a big stick". Our lawyer analyst will call the rule filer and inform them of the potential JCARR prong violation. In most cases, the rule filer will revise or refile the rule to correct the prong violation.
- Our final approach is to have the JCARR Committee recommend a concurrent resolution to invalidate the rule. (Note: Because of the "speak softly and carry a big stick" approach, there have only been 14 rule invalidations since JCARR's inception.)

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How does a motion to invalidate a Original Filed Rule work?

- A motion to recommend a resolution to invalidate is made by a committee member, and if there is a second a vote is taken. For the motion to succeed it must receive 6 votes.
- After the JCARR Committee makes a recommendation for invalidation, a Concurrent Resolution is prepared and introduced in the Senate or House.
- If the resolution passes one house by a majority vote, the resolution goes to the other house.
- If both houses pass the resolution by a majority vote, the rule is removed from the rule filing system.

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No Change 5 Year Review Rules

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Agency review criteria to determine if a 5 year rule should be amended or rescinded.

- Should the rule be continued without an amendment, amended, or 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 ORC 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, 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.

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How is a No Change 5 year review Rule Processed?

- The Agency, Board or Commission files the rule in the Electronic Rule File (ERF) system. They also complete on the system a Rule Summary and Fiscal Analysis (RSFA) form which further describes the rule and its financial impact.
- The agency is not required to have a public hearing.
- JCARR has jurisdiction over the rule for 90 days after filed.
- The JCARR Senior Rule Processor reviews the rule filing specifically looking for a JCARR "no change" prong violation. The following are the "no change" JCARR prongs:

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5 Year JCARR Prongs

- Did the agency improperly apply the review criteria when reviewing the rule?
- Did the agency fail to meet the required Incorporation by Reference Standards law?
- Does the rule have an adverse impact on business and the agency has not reduced or eliminated the impact? **

(** Does not apply until passage of corrections bill.)

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"No change" 5 year review Prong Invalidation Procedures

- The invalidation procedures are the same as for the Original Rule File procedures. The only exception is it takes 7 committee votes to pass the motion.

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What happens when an agency misses their 5 year review requirement?

- In most cases JCARR will contact the agency and inform them they have missed the review date and work with them to meet the review requirement.
- Ohio law permits a rule to be invalidated for missing a 5 year review date.
- Before the committee can recommend invalidation, the agency must come before the committee and explain why they missed the review date.
- A missed 5 year review date requires 6 votes for a recommendation to invalidate.

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Senate Bill 2 (SB2)

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How has Senate Bill 2 Change JCARR Procedures?

- SB 2 was signed by the Governor on March 4th 2011 and is effective for JCARR on January 1, 2012.
- The bill's main purpose is to reduce or eliminate "adverse impact" of rules on business.
- The bill creates the Common Sense Initiative Office (CSIO). CSIO will work with the rule filer to reduce or eliminate the "adverse impact" on business before the rule is filed with JCARR.

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- When JCARR receives an original file rule, under SB2 our first task is to determine if it has a "adverse impact" on business. An
- "adverse impact" is described as, if the rule requires:
 - License, permit, or any other prior authorization to engage in or operate a line of business;
 - Imposes a criminal penalty, 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.

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What happens if there is a "adverse impact" on business?

- If the rule has a "adverse impact" and the rule filer did not indicate it, or the description of the impact is not complete, then JCARR is required to "reject" the rule.
- If the rule filer indicated it has a "adverse impact", then JCARR must determine if the "adverse impact" is "justifiable". If the "adverse impact" is not justifiable, then the JCARR committee would need to make a recommendation to invalidate the rule. (6th prong for Original Filed Rules.)

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How does SB 2 impact "no change" 5 year review rules?

- It is the same review procedure as "original" file rules except for the following:
 - A 5 year review rule cannot be rejected for not indicating there is a "adverse impact".
 - A 5 year review rule does not have the "justifiable" standard for invalidation. The invalidation standard for 5 year review rules is if the "adverse impact" has not been reduced or eliminated then the JCARR Committee should recommend invalidation.
- (The above was not the intent of SB 2)*

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Senate Bill 3 (JCARR related)

- Senator LaRose is the sponsor of the bill
- Gives JCARR the ability to refer rules to CSIO for adverse impact analysis
- It clarifies and corrects the no-change rejection function of JCARR and adverse impact on business invalidation option

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