
JOINT COMMITTEE ON AGENCY RULE REVIEW

- Reduces, from six months to three months, the time in which an agency must begin the rulemaking process when the agency identifies a principle of law or policy that should be restated as a rule or is informed of such a principle or policy through a recommendation from the Joint Committee on Agency Rule Review (JCARR).
- Prohibits an agency that is in the process of supplanting a principle of law or policy from relying on the principle or policy during the rulemaking process if the agency fails to file the rule in final form within one year after specified events occur or if the agency notifies JCARR of the agency's intention to file a revised proposed rule.

Restatement of principle of law or policy in rule

(R.C. 101.352, 121.93, and 121.931)

Principle or policy reliance

The bill makes changes to the processes a state agency uses to restate a principle of law or policy in a rule. The bill shortens the time period, from six months to three months, in which the agency must begin the rulemaking process after either determining or receiving a recommendation to restate a principle of law or policy in rule. Continuing law allows an agency to rely on a principle or policy while it is in the process of adopting a rule to supplant the principle or policy. If the agency fails to begin rulemaking within the required time (currently, six months; under the bill, three months) or the agency neglects or abandons the process before completing it, the agency must stop relying on the principal or policy. The bill adds the following reasons under which an agency must stop relying on a principle or policy after beginning the rulemaking process:

- The agency fails to file the rule in final form within one year after it determines rule making is necessary or within one year after receiving a written recommendation from the Joint Committee on Agency Rule Review (JCARR).
- The agency notifies JCARR the agency intends to file a revised proposed rule under continuing law.

Overview – principle of law or policy

Continuing law requires most state agencies periodically to review their operations and identify principles of law and policies that have not been stated in a rule, but that the agencies are relying on for either of the following activities:

- Conducting adjudications or other determinations of rights and liabilities;
- Issuing writings and other materials, such as instructions, policy statements, guidelines, advisories, circulars, letters, and opinions.

An agency must perform at least one review during a governor's term. Within six months after the end of the governor's term, the agency must transmit a report to JCARR stating that the

agency has completed one or more reviews. In its report, the agency must detail specific steps the agency is taking regarding those reviews.

If the agency determines a principle of law or policy identified during a review period has a general and uniform operation and establishes a legal regulation or standard that would not exist without the principle or policy, the agency must determine whether the principle or policy should be replaced with a rule. In making the determination, the agency must decide whether supplanting the policy or principal with a rule will achieve any of the goals identified in continuing law. If, based on those goals, an agency determines it should supplant a principle or policy with a rule, the agency begins the rulemaking process.

Additionally, a person may petition an agency to restate a principle or policy in a rule if both of the following apply:

- The person was a party to an adjudication or other determination before an agency that resulted in an order or was a party to a lawsuit that ended in a judgment;
- The adjudication, determination, or lawsuit involved a principle of law or policy relied on by the agency that should have been supplanted by a rule but has not been so supplanted.

If, based on the standards the agency applies during its own review, an agency determines the principle or policy that is the subject of the petition should be replaced with a rule, the agency grants the petition and begins the rulemaking process.

Finally, if JCARR becomes aware that an agency is relying on a principle of law or policy that should have been replaced with a rule, JCARR may call the agency to appear before JCARR to address why the agency is relying on the policy or principle. After the appearance, JCARR applies the standards the agency applies during the agency's reviews and may recommend the agency supplant the principle or policy with a rule. JCARR must support its recommendation with a brief rationale of why the principle of law or policy should be supplanted by a rule. If an agency receives a recommendation from JCARR, it must begin the rulemaking process.

For additional details about the rulemaking process, see the LSC Members Brief, [Administrative Rulemaking \(PDF\)](#), which is available on LSC's website: lsc.ohio.gov/Publications.