



An Overview of Administrative Rulemaking

PREPARED BY: CODY WEISBRODT, LSC ATTORNEY
REVIEWED BY: MICHAEL BURNS, LSC CHIEF OF LEGAL REVIEW

When the subject of a statute is technically complex, the General Assembly often authorizes an administrative agency to implement the statute. A classic example is public utilities legislation. Regulation of public utilities often involves technically complex matters that are better understood by an agency that frequently deals with them.

An important technique by which agencies are empowered to implement statutes is by rulemaking. That is, the General Assembly often directs the agency to adopt rules for particular purposes. A rule is a formal, written statement of general principles of law, as is a statute. For example, in a public utilities statute that entitles a public utility to a "fair and reasonable return on its investment," the General Assembly might direct the agency to adopt rules stating criteria by which a fair and reasonable return can be determined. The criteria are general principles of law just as is the statutory phrase under which they are adopted, but the criteria are defined, not by the General Assembly, but by the adopting agency in fulfillment of the rulemaking power it has been given by the General Assembly.

This informational brief outlines generally how agencies undertake adopting rules. That is, it explains rulemaking procedure, but does not address when rulemaking is appropriate or the role rules play in agency operations. Diagrams of the procedure appear on pages 4 and 5.

Rulemaking procedure in general

An administrative rule can be effective as part of the law in Ohio only after its adopting agency has taken it through a statutorily prescribed rulemaking procedure.

There are two general statutory rulemaking procedures: one in the Ohio Administrative Procedure Act, R.C. Chapter 119., and the other in R.C. 111.15. In general, if an agency is not required to follow the rulemaking procedure of Chapter 119., it must follow the rulemaking procedure of R.C. 111.15.

Administrative agencies often are required to adopt rules to implement statutes enacted by the General Assembly. Rules are formal, written statements of general principles of law, as are the statutes under which they are adopted.



An administrative rule is law only after its adopting agency has put it through a statutorily prescribed rulemaking procedure. There are two procedures, one in the Administrative Procedure Act, R.C. Chapter 119., and the other in R.C. 111.15. Which procedure applies to a rule is a matter of legislative choice, and depends upon whether public input to the rulemaking process is considered important.

In rulemaking under R.C. Chapter 119., an agency gives public notice of its intent to adopt a rule and then holds a public hearing on the proposed rule. In rulemaking under R.C. 111.15, an agency neither gives public notice nor holds a public hearing.

Whether an agency is required to follow the R.C. Chapter 119. or R.C. 111.15 rulemaking procedure is a matter of legislative choice. The major difference between the two procedures is that Chapter 119. requires an agency to give public notice of its intention to adopt a rule and then to conduct a public hearing on the proposed rule. R.C. 111.15 does not impose a similar public notice and hearing requirement.

Rules adopted under Chapter 119.

When an agency intends to adopt a 119 rule, it proceeds as follows:

(1) The agency gives public notice of its intention to adopt the rule in the online *Register of Ohio* at least 30 days before its scheduled hearing on the proposed rule. The notice includes a synopsis of the proposed rule, a statement of the agency's reason or purpose for proposing the rule, and the date, time, and place of the hearing. In addition to notice in the *Register of Ohio*, the agency also may give whatever other notice it reasonably considers necessary to ensure that all persons who will be subject to or affected by the rule will be constructively notified of its proposal.¹

(2) At least 65 days before adopting the rule, the agency files the notice, the proposed rule, and a rule summary and fiscal analysis (RSFA) with the Secretary of State (SOS) and the Legislative Service Commission (LSC). The agency also files the notice, proposed rule, and RSFA with the Joint Committee on Agency Rule Review (JCARR) for

legislative review. Proposed 119 rules, together with their notices of intended adoption and RSFAs, are published online in the *Register of Ohio*.²

(3) The agency holds a public hearing on the proposed rule not earlier than the 31st nor later than the 40th day after its filing with the SOS and LSC. At the hearing, a person affected by the proposed rule (or the person's attorney) may present the person's positions, arguments, and contentions, orally or in writing; offer and examine witnesses; and present evidence showing that the proposed rule, if adopted, will be unreasonable or unlawful. An agency also may permit a person to present positions, arguments, or contentions in writing for a reasonable period before, after, or both before and after the hearing.³

(4) Sixty-six days after filing the proposed rule, and if the time for legislative review has expired, the agency may adopt the proposed rule and file it in final form. An adopted rule must be consistent with the synopsis included in the public notice that pertained to the rule as proposed.⁴

(5) Finally, the agency makes a reasonable effort to inform those affected by the rule of its adoption and to have copies of the rule available for distribution to those requesting such a copy.⁵

An adopted 119 rule takes effect as specified by the adopting agency, but not earlier than the 10th day after being filed in final form.⁶

Adopted 119 rules are published in the *Register of Ohio* and in the Administrative Code.



Emergency 119 rules

At the request of an agency, the Governor may suspend the normal 119 rulemaking procedure for a particular 119 rule upon determining that an emergency exists. The agency then may immediately adopt the rule without complying with the normal notice, hearing, and other proposal requirements. An emergency 119 rule takes effect immediately upon being filed, but expires on the 121st day after its effective date—unless, in the meantime, the agency has readopted the rule according to the normal 119 rulemaking procedure.⁷

Emergency 119 rules are published online in the *Register of Ohio*.

Rules adopted under R.C. 111.15

An agency that intends to adopt a 111 rule files the proposed rule and an RSFA with the SOS and LSC at least 65 days before adopting the rule.⁸ Agencies do not give public notice of proposed 111 rules. Nor are proposed 111 rules subject to a public hearing. Consequently, the R.C. 111.15 rulemaking procedure often is referred to as the "abbreviated rulemaking procedure."

All rules being adopted by an agency must be filed with JCARR unless the agency is explicitly exempted by statute from legislative review. If a proposed 111 rule is subject to legislative review, the

agency may not adopt the rule and file it in final form until the time for legislative review has expired or earlier than the 66th day after the rule was filed as a proposed rule.⁹

If, however, a statute exempts a proposed 111 rule from legislative review, an agency may immediately adopt the rule and file it in final form on the 66th day after it was filed as a proposed rule.¹⁰

An adopted 111 rule takes effect as specified by the adopting agency, but not earlier than the 10th day after being filed in final form.¹¹

Proposed 111 rules, and RSFAs for proposed 111 rules, are published online in the *Register of Ohio*.

Emergency 111 rules

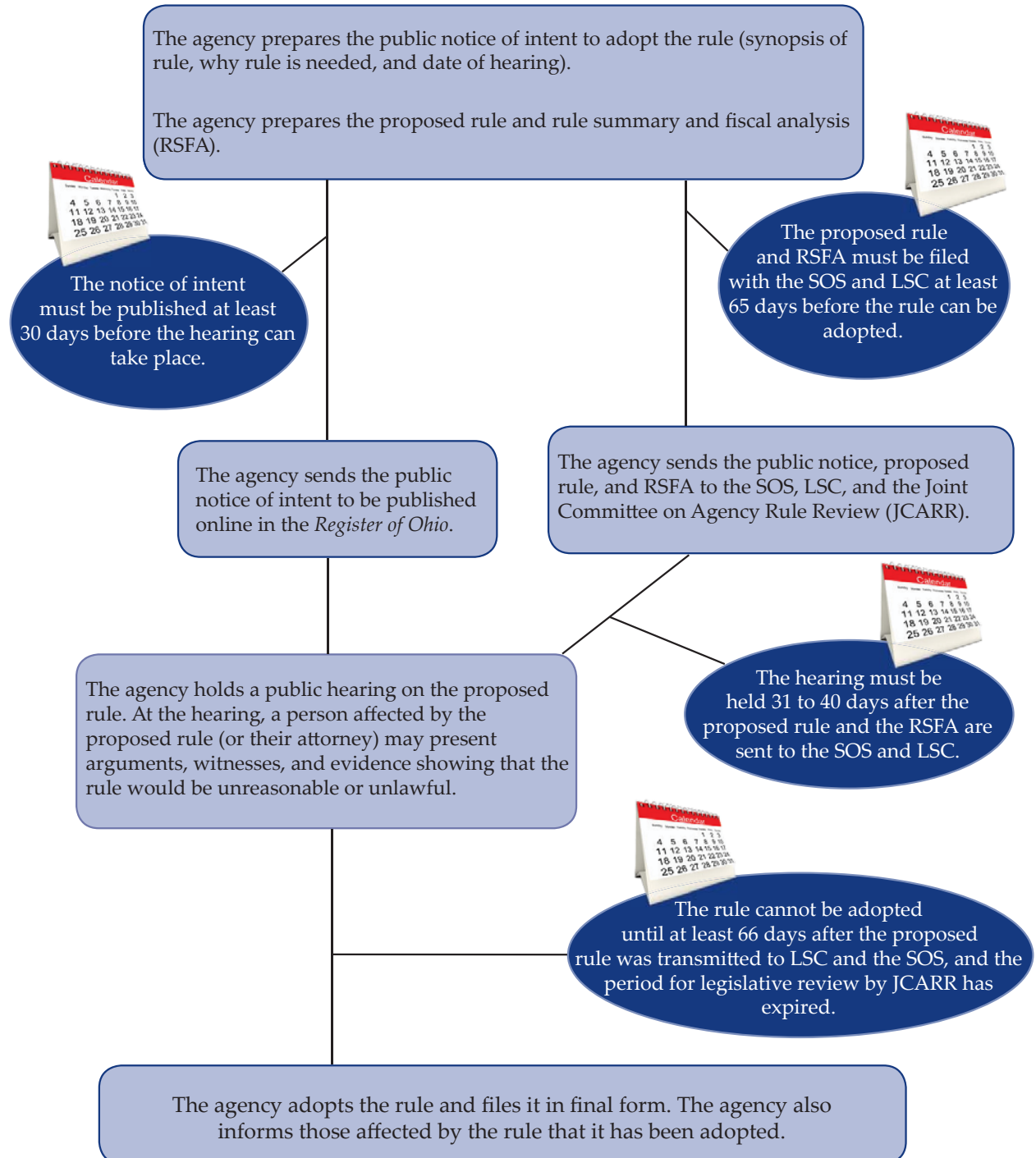
An agency may immediately adopt an emergency 111 rule without complying with the proposal requirements that normally apply to 111 rules. (Unlike emergency 119 rules, the Governor's authorization is not required.) An emergency 111 rule takes effect immediately upon being filed or on a later date and time specified by the adopting agency, but expires on the 121st day after its effective date—unless, in the meantime, the agency has readopted the rule according to the normal 111 rulemaking procedure.¹²

Emergency 111 rules are published online in the *Register of Ohio*.

An agency may adopt rules on an emergency basis without complying with the normal rulemaking procedure. (Emergency 119 rules require the Governor's approval.) Emergency rules remain in effect for only 120 days unless in the meantime they are readopted under the normal rulemaking procedure.

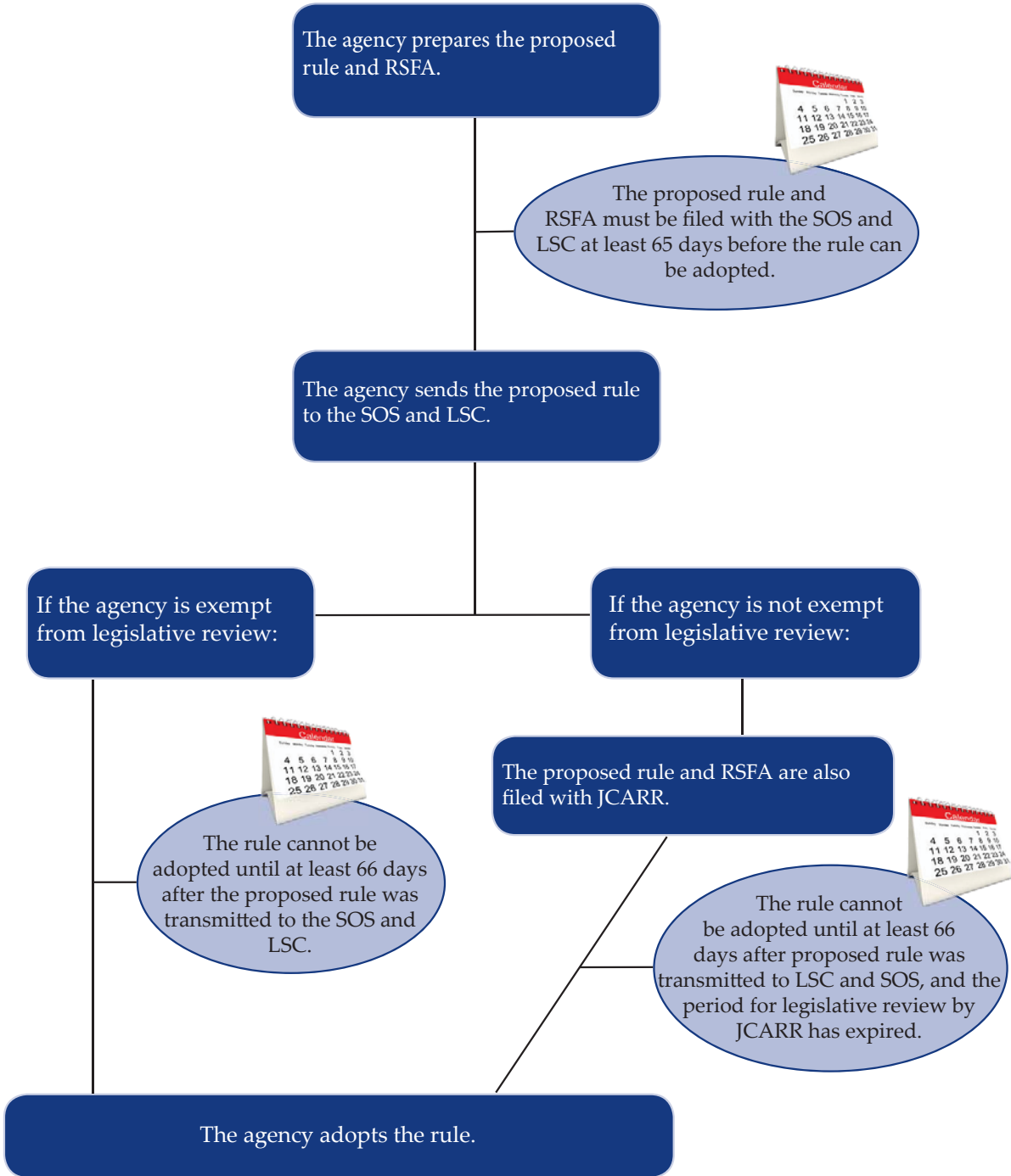
Chapter 119. Rulemaking Process

(R.C. 119.03)



Chapter 111. Rulemaking Process

(R.C. 111.15)



An agency prepares a rule summary and fiscal analysis (RSFA) to accompany certain rule filings. An RSFA explains the rule and its expected effects.

The Register of Ohio is an electronic gazette, published free on the Internet, that provides notice of and information about 111 and 119 rulemaking.

Rule Summary and Fiscal Analysis (RSFA)

When an agency files a proposed rule, it also files a rule summary and fiscal analysis (RSFA) of the rule. JCARR designs a form for the RSFA, which may solicit information such as: (1) a brief summary of, and the legal basis for, the rule, including a citation to the statute that authorizes or requires the rule, the statute the agency intends to amplify or implement by adopting the rule, and the statute that prescribes the procedure under which the rule is being proposed, (2) an estimate in dollars of the amount by which the rule would increase or decrease revenues or expenditures during the state's current fiscal biennium, (3) a citation identifying the appropriation that authorizes each expenditure necessitated by the rule, (4) a summary of the estimated cost to all directly affected persons of complying with the rule, (5) reasons why the rule is being proposed, (6) if the rule has a fiscal effect on school districts, counties, townships, or municipalities, an estimate in dollars of the cost of local compliance or, if dollars cannot be estimated, an explanation of why not, (7) if the fiscal effect on school districts, counties, townships, or municipalities results from a federal requirement, an explanation that the rule conforms to the scope and intent of the federal requirement or, if the rule exceeds the federal requirement, an estimate of the excess cost, including specifically the excess cost for local governments, and a justification of the excess cost, (8) if the rule has a fiscal effect on

school districts, counties, townships, or municipalities, a comprehensive cost estimate that explains how the costs of compliance were calculated, identifies the major cost categories, explains the agency's and the affected governments' ability to pay for the rule's requirements, and states any impact the rule will have on economic development, and (9) explanations regarding the public availability of text or material the rule incorporates by reference. The RSFA form, instead of or in addition to these matters, may solicit any other information JCARR considers necessary to make the proposed rule or its fiscal effect fully understandable.¹³

Review of proposed rules


Proposed rules generally are subject to several forms of review, including legislative review and business review. Adopted rules also are subject to review on five-year cycles. Because of their complexity, these review procedures will be discussed in a later informational brief.

Register of Ohio

The *Register of Ohio* is an electronic gazette published free of charge by LSC on the Internet:¹⁴ www.registerofohio.state.oh.us. (A "gazette" is an official publication that gives official notice and official information.) When a statute requires that a rulemaking or rule-related document be published in the *Register of Ohio*, that publication is legally sufficient to give notice of the content



of the document to persons who are subject to or affected by the content. Until a document that is statutorily required to be published in the

Register of Ohio is so published, its content is not valid against a person who does not have actual knowledge of the content.¹⁵ 

Endnotes

- ¹ R.C. 119.03(A).
- ² R.C. 119.03(A), (B), and (C) and 127.18.
- ³ R.C. 119.03(A) and (D).
- ⁴ R.C. 119.03(E) and 119.04(A)(1) and (2).
- ⁵ R.C. 119.03(F).
- ⁶ R.C. 119.03(E) and 119.04(A)(1).
- ⁷ R.C. 119.03(G).
- ⁸ R.C. 111.15(D).
- ⁹ R.C. 111.15(B)(1) and (3) and (D).
- ¹⁰ R.C. 111.15(B)(1) and (3).
- ¹¹ R.C. 111.15(B)(1) and (3).
- ¹² R.C. 111.15(B)(2) and (3) and (D)(1).
- ¹³ R.C. 127.18.
- ¹⁴ R.C. 103.051.
- ¹⁵ R.C. 119.037.

**PUBLISHED BY THE OHIO
LEGISLATIVE SERVICE
COMMISSION STAFF**

9th Floor
Vern Riffe Center
Columbus, Ohio
(614) 466-3615

Director
Mark Flanders

Deputy Director
Jim Kelly

Contributing Author
Cody Weisbrodt
LSC Attorney

Reviewer
Michael Burns
LSC Chief of Legal Review

Layout & Design
Linda Bayer