



Ohio Administrative Code

Rule 107-3-03 Procedure for referral of actions or proposed actions to the common sense initiative office.

Effective: July 20, 2023

(A) Scope and purpose:

Section 107.56 of the Revised Code directs the office to analyze actions or proposed actions of state boards or commissions which could contravene federal antitrust law. This chapter amplifies the analysis and review required by that section, and in light of the U.S. supreme court case, styled N. Carolina State Bd. of Dental Examiners v. FTC, U.S., 135 S.Ct. 1101, 191 L.Ed.2d 35 (2015).

(B) Definitions:

(1) "Board or commission" means the same as defined in section 107.56 of the Revised Code.

(2) An "action" means a board's or commission's order, proposed order, or other action or proposed action which is subject to review and referred to the common sense initiative office as described in section 107.56 of the Revised Code.

(3) "Office" means the common sense initiative office as described in section 107.61 of the Revised Code.

(4) "Person affected by or likely to be affected by the action or proposed action" of a board or commission means a person that is or will be directly or indirectly affected in the person's business, profession or occupation, or that otherwise is or will be directly or indirectly injured in the person's business or property, because of one or more of the effects described in division (B)(1) of section 107.56 of the Revised Code.

(C) In accordance with division (B) of section 107.56 of the Revised Code, boards and commissions should refer to the office for review, as soon as is practicable, any and all proposed actions that, in the board's or commission's judgment, potentially have any of the effects described in division (B)(1) of section 107.56 of the Revised Code.



(D) When an action or proposed action is referred to the office for review under section 107.56 of the Revised Code, the following information shall be presented to the office on a form prescribed by the office, with a copy of the action or proposed action if the action or proposed action is in writing, and any other information appropriate for the office's review of the action or proposed action:

(1) If the action or proposed action is referred by a board or commission, the following:

(a) An explanation of the action or proposed action and which effects described in division (B)(1) of section 107.56 of the Revised Code make the action or proposed action subject to review by the office;

(b) An explanation of the purported statutory or other legal authority of the board or commission to take the action or proposed action;

(c) The factual background, nature and purpose of the action or proposed action, including any consumer protection, or health and safety, or other state policy rationale for the action and any supporting evidence;

(d) The steps taken by the board or commission as part of the process of arriving at the decision to take this action, including but not limited to public hearings held, public comments invited, studies conducted, data collected, or interviews conducted;

(e) An explanation of the action or proposed action's alleged consistency with state or federal antitrust law; and

(f) Whether the action or proposed action relates to or depends upon a question that is the subject of a formal opinion request pending before the attorney general.

(2) If the action or proposed action is referred by anyone other than those referenced in paragraph (C)(1) of this rule, the following:

(a) An explanation of the action or proposed action, the name of the board or commission taking or



proposing the action, and which effects described in division (B)(1) of section 107.56 of the Revised Code make the action or proposed action subject to review by the office;

(b) An explanation, if relevant, of the purported statutory or other legal authority, or lack of authority of the board or commission to take the action or proposed action;

(c) Relevant factual background that the person referring the matter wishes to include;

(d) An explanation of the action or proposed action's alleged inconsistency with state or federal antitrust law, which may include a description of how the action or proposed action may affect the number of competitors and those competitors' incentives to compete in amount, quality, variety, or other aspects of the good or service offered;

(e) Evidence that a copy of the referral form has been transmitted to the board or commission pursuant to division (C)(2) of section 107.56 of the Revised Code; and

(f) An explanation of the harm that the action or proposed action will impose on the regulated industry of the board or commission.

(3) If the action or proposed action is referred pursuant to paragraph (C)(2) of this rule, the subject board or commission shall inform the office of any pending formal opinion from the attorney general on the matter and provide to the office one of the following:

(a) A response to the referral containing the information required in paragraph (C)(1) of this rule; or

(b) If the subject board or commission believes the referral to be an action or proposed action not subject to review by the office pursuant to division (B)(2) of section 107.56 of the Revised Code, a brief statement explaining why the action is not subject to review by the office.

(E) In completing the review and determination as provided in section 107.56 of the Revised Code, the office may do any of the following:

(1) Require the subject board or commission to provide information, including all or any portion of



the materials assembled by the board or commission in arriving at the decision to take action, which is not otherwise made confidential by law, to the office upon request;

(2) Set a period of time for public review and comment on the action or proposed action, as described in paragraph (L) of this rule;

(3) Conduct public hearings;

(4) Review and analyze market conditions;

(5) Review, perform, or commission studies;

(6) Create forms for use in the review process as the office determines to be useful in that process; or

(7) Consult with appropriate subject matter experts, including legal counsel.

(F) In making the office's determination under section 107.56 of the Revised Code, the office may consider any relevant information or evidence that the office finds helpful in completing the review and determination.

(G) If a referred action or proposed action concerns a proposed Administrative Code rule by a board or commission, the same referral and review process as provided for in this chapter applies. This referral and review is separate and distinct from the office's evaluation of any board or commission's draft rule analysis for business impact as provided in section 107.54 of the Revised Code.

(H) A completed referral form, located at governor.ohio.gov/csireferrals, and any additional documentation shall be submitted to the "Common Sense Initiative Office" by mail to "77 S. High Street, 30th Floor, Columbus, OH 43215" or email to csireferrals@governor.ohio.gov.

(I) Upon receipt of a referral concerning actions or proposed actions reviewed by the office, the common sense initiative office may post the referral on the website governor.ohio.gov/csireferrals. The office may allow public comment concerning actions or proposed actions reviewed by the



office in the following manner:

(1) Upon notice of public comment, the referral will be posted at governor.ohio.gov/csireferrals and include a link to relevant information and a link for stakeholder comment. The office may share public notice directly with stakeholders at the office's discretion;

(2) Stakeholders may provide comment on the referral to the office by emailing comments to csireferrals@governor.ohio.gov within the time period specified in the notice of public comment; and

(3) The office will forward the comments to the subject board or commission.