



## Ohio Revised Code

### Section 106.031 Procedures for no change rules.

Effective: June 8, 2022

Legislation: Senate Bill 9

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If an agency, on the basis of its review of a rule under section 106.03 of the Revised Code, determines that the rule does not need to be amended or rescinded, proceedings shall be had as follows:

(A)(1) If, considering only the standard of review specified in division (A)(7) of section 106.03 of the Revised Code, the rule has an adverse impact on businesses, the agency shall prepare a business impact analysis that describes its review of the rule under that division and that explains why the regulatory intent of the rule justifies its adverse impact on businesses. If the rule does not have an adverse impact on businesses, the agency may proceed under division (B) of this section.

(2) The agency shall transmit a copy of the full text of the rule and the business impact analysis electronically to the common sense initiative office. The office shall make the rule and analysis available to the public on its web site under section 107.62 of the Revised Code.

(3) The agency shall consider any recommendations made by the office.

(4) Not earlier than the sixteenth business day after transmitting the rule and analysis to the office, the agency shall either (a) proceed under divisions (A)(5) and (B) of this section or (b) commence, under division (B)(1) of section 106.03 of the Revised Code, the process of rescinding the rule or of amending the rule to incorporate into the rule features the recommendations suggest will eliminate or reduce the adverse impact the rule has on businesses. If the agency determines to amend or rescind the rule, the agency is not subject to the time limit specified in division (B)(1) of section 106.03 of the Revised Code.

(5) If the agency receives recommendations from the office, and determines not to amend or rescind the rule, the agency shall prepare a memorandum of response that explains why the rule is not being rescinded or why the recommendations are not being incorporated into the rule.



(B) The agency shall assign a new review date to the rule. The review date assigned shall be not later than five years after the immediately preceding review date pertaining to the rule. If the agency assigns a review date that exceeds the five-year maximum, the review date is five years after the immediately preceding review date. The immediately preceding review date includes the date of the review of a rule under section 106.032 of the Revised Code.

(C)(1) The agency shall file all the following, in electronic form, with the joint committee on agency rule review, the secretary of state, and the director of the legislative service commission: a copy of the rule specifying its new review date, a complete and accurate rule summary and fiscal analysis, and, if relevant, a business impact analysis of the rule, any recommendations received from the common sense initiative office, and any memorandum of response.

(2) Subject to section 106.05 of the Revised Code, the joint committee does not have jurisdiction to review, and shall reject, the filing of a rule under division (C)(1) of this section if, at any time while the rule is in its possession, it discovers that the rule has an adverse impact on businesses and the agency has not complied with division (A) of this section. The joint committee shall electronically return a rule that is rejected to the agency, together with any documents that were part of the filing. Such a rejection does not preclude the agency from refiling the rule under division (C)(1) of this section after complying with division (A) of this section. When the filing of a rule is rejected under this division, it is as if the filing had not been made.

(D) The joint committee shall publish notice of the agency's determination not to amend or rescind the rule in the register of Ohio for four consecutive weeks after the rule is filed under division (C) of this section.

(E) During the ninety-day period after a rule is filed under division (C) of this section, but after the four-week notice period required by division (D) of this section has ended, the joint committee may recommend to the senate and house of representatives the adoption of a concurrent resolution invalidating the rule if the joint committee finds any of the following:

(1) The agency improperly applied the standards in division (A) of section 106.03 of the Revised Code in reviewing the rule and in determining that the rule did not need amendment or rescission.



(2) The rule has an adverse impact on businesses, and the agency has failed to demonstrate through a business impact analysis, recommendations from the common sense initiative office, and a memorandum of response that the regulatory intent of the rule justifies its adverse impact on businesses.

(3) If the rule incorporates a text or other material by reference, any of the following applies:

(a) The citation accompanying the incorporation by reference is not such as reasonably would enable a reasonable person to whom the rule applies readily and without charge to find and inspect the incorporated text or other material;

(b) The citation accompanying the incorporation by reference is not such as reasonably would enable the joint committee readily and without charge to find and inspect the incorporated text or other material; or

(c) The rule has been exempted in whole or in part from sections 121.71 to 121.74 of the Revised Code on grounds the incorporated text or other material has one or more of the characteristics described in division (B) of section 121.75 of the Revised Code, but the incorporated text or other material actually does not have any of those characteristics.

(4) If the agency is subject to sections 121.95, 121.951, 121.952, and 121.953 of the Revised Code, the agency has failed to justify the retention of a rule containing a regulatory restriction.

(5) The rule implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.

If the agency fails to comply with section 106.03 or 106.031 of the Revised Code, the joint committee shall afford the agency an opportunity to appear before the joint committee to show cause why the agency has not complied with either or both of those sections. If the agency appears before the joint committee at the time scheduled for the agency to show cause, and fails to do so, the joint committee, by vote of a majority of its members present, may recommend the adoption of a concurrent resolution invalidating the rule for the agency's failure to show cause. Or if the agency fails to appear before the joint committee at the time scheduled for the agency to show cause, the



joint committee, by vote of a majority of its members present, may recommend adoption of a concurrent resolution invalidating the rule for the agency's default.

When the joint committee recommends that a rule be invalidated, the recommendation does not suspend operation of the rule, and the rule remains operational pending action by the senate and house of representatives on the concurrent resolution embodying the recommendation. If the senate and house of representatives adopt the concurrent resolution, the rule is invalid. If, however, the senate and house of representatives do not adopt the resolution, the rule continues in effect, and shall next be reviewed according to the new review date assigned to the rule.