



Ohio Revised Code

Section 121.93 Review of agency operations.

Effective: October 17, 2019

Legislation: House Bill 166 - 133rd General Assembly

(A) An agency shall review its operations to identify principles of law or policy that have not been stated in a rule and that the agency is relying upon in conducting adjudications or other determinations of rights and liabilities or in issuing writings and other materials, such as instructions, directives, policy statements, guidelines, handbooks, manuals, advisories, notices, circulars, advertisements, forms, letters, and opinions. An agency is not required to identify principles of law or policy relied upon in issuing internal management rules as defined in section 111.15 of the Revised Code. The agency shall complete at least one of the reviews during a governor's term.

Within three months after the expiration of a governor's term, the agency electronically shall transmit a report to the joint committee on agency rule review containing the following:

- (1) A statement that the agency has completed one or more of the reviews, specifying the exact number of reviews completed during the governor's expired term;
- (2) The principles of law or policies identified under this division;
- (3) The agency's considerations regarding the identified principles of law or policies under division (B) of this section;
- (4) Any principles of law or policies for which the agency determines rulemaking is indicated or for which the agency has commenced the rule-making process under division (C) of this section.

The joint committee on agency rule review shall make the reports available on its web site.

(B) The agency shall determine whether a principle of law or policy thus identified has a general and uniform operation and establishes a legal regulation or standard that would not exist in its absence. If the principle of law or policy has these characteristics, the agency shall determine whether the principle of law or policy should be supplanted by its restatement in a rule to achieve one or more of



the following as they are relevant to the principle of law or policy:

- (1) Assert the general and uniform operation of the principle of law or policy;
- (2) Make the principle of law or policy more readily available to the public;
- (3) Make the principle of law or policy more readily available to persons who specifically are affected by the principle of law or policy;
- (4) Enable the principle of law or policy to be better known in advance of its application;
- (5) Enable greater public participation in improvement and further development of the principle of law or policy;
- (6) Enable greater participation by persons specifically affected by the principle of law or policy in the improvement and further development of the principle of law or policy;
- (7) Make the principle of law or policy more easily understandable; or
- (8) Make the principle of law or policy more readily available to those legally charged with monitoring or reviewing the agency's operations.

If a principle of law or policy aids in the interpretation of an existing rule or statute, the agency shall consider whether the aiding effect clarifies or otherwise resolves an uncertainty in the existing rule or statute. If the principle of law or policy can be so characterized, the agency shall consider whether the principle of law or policy should be supplanted by its restatement in an interpretive rule. The agency may not presume that a principle of law or policy that aids in the interpretation of an existing rule or statute is simply a reiteration of the existing rule or statute.

(C) If the agency determines, in light of the foregoing standards, that rulemaking is indicated, the agency shall commence the rule-making process as soon as it is reasonably feasible to do so, but not later than the date that is six months after the determination was made. The principle of law or policy as it is restated in a rule does not need to be wholly congruent with the supplanted principle of law or



policy. The agency lawfully may improve or develop further the supplanted principle of law or policy as it is restated in a rule.

The agency may continue to rely upon the principle of law or policy, but only while it is complying with the preceding paragraph. The agency may not rely upon the principle of law or policy in advising with regard to or in determining the rights or liabilities of a person if the agency fails to commence the rule-making process by the deadline specified in the preceding paragraph, or if, after commencing the rule-making process, the agency neglects or abandons the rule-making process before it is completed.

(D) A principle of law or policy that is relied upon directly or by clear implication from a statute applying to the agency does not need to be supplanted by rule.