



May 2019

The Ohio Fire Code Rule Revision/Development Process

Pursuant to Ohio law, the Ohio Department of Commerce, Division of State Fire Marshal (SFM) must write administrative rules regarding, among other things, hotel licensure and inspection, flammability standards, fireworks regulations, and all matters of fire safety. Collectively, these rules are independently published and known as the *Ohio Fire Code* (OFC). They are also contained in the *Ohio Administrative Code* at §§ 1301:7-7-01 through 1301:7-7-80.

Ohio law also requires the SFM to periodically review all of the administrative rules that it has adopted; this review must occur *at least* every 5 years. See *Ohio Revised Code* (R.C.) §§ 119.03 and 119.032. The purpose of this ‘five-year rule review’ is to determine whether or not the SFM’s rules should be rescinded or revised and to ensure that the rules contained in the OFC are necessary and relevant and incorporate the most current industry standards and best practices. During the five-year rule review process, the SFM reviews and updates all of the rules in the OFC.

In addition, the SFM may do ‘interim’ rule updates. An interim rule review is usually only done as the result of a legislative directive, a large industry change that needs to be addressed prior to the time for the next scheduled 5-year rule review, or pursuant to an emergency (discussed below in Section C). These ‘interim rule updates’ are generally limited in scope and affect only certain specified rules (as opposed to the 5-year rule review when all OFC rules are reviewed). The Director of the Ohio Department of Commerce (Director) and the State Fire Marshal (Marshal) determine when and if an interim rule update is warranted.

The process followed by the SFM for updating its rules consists of the same 5 steps discussed below regardless of whether the review is the result of an interim update or a 5-year rule review update. The SFM starts with crafting a draft of the new rule(s). During an interim update, the source of the rule language depends on why the update is taking place. For instance, if the SFM has been given a legislative directive, SFM staff will generally draft rule language based on the relevant legislative provisions. In contrast, when a 5-year rule review happens, the draft language starts with provisions from the most recent versions of the International Code Council’s (ICC) *International Fire Code* (IFC).

Because the OFC is based on the IFC, a 5-year rule review update begins with an internal review of the most recent versions of the IFC published by the ICC.¹ The SFM reviews changes made to the IFC and includes those changes in a ‘draft’ of the OFC. During this process, the SFM will also incorporate other changes that the SFM determines need to be made. These

¹ The IFC is published on a three-year cycle. The OFC, as discussed, is published on a five-year cycle. Therefore, updates to the OFC generally incorporate two iterations of the IFC.

changes reflect policy decisions in Ohio, legislative directives, and coordination with like *Ohio Building Code* provisions and carry forward changes to IFC language that were contained in prior OFC versions (i.e., the “Ohio-izations” made in prior OFC versions).

Once the SFM has a draft of the OFC rule(s) prepared, it enters an “active code update cycle” and begins its official process for revision and adoption of the OFC. The process consists of five steps: the Petition Period, the Comment Period, the Common Sense Initiative (CSI), the Joint Committee on Agency Rule Review (JCARR), and Publication and Training. The Petition and Comment Periods are internal procedures followed by the SFM. CSI and JCARR review are required by Ohio law and all administrative agencies that adopt rules must comply with their review procedures.

For stakeholders and interested parties, an active code update cycle begins with a kickoff meeting and/or an announcement by the SFM which identifies the rules that will be updated. At that time, the SFM also establishes and publishes key dates for each stage of the update process. With the kickoff and announcement that a rule update is occurring, the SFM essentially opens a ‘call for Petitions’ and starts the Petition Period.

A. The Five Steps of the SFM Rule Revision / Development Process

1. Petition Period

Petitions are the mechanism by which any interested party may recommend a change to language in the OFC. Petitions may propose that a new provision be added to the OFC, that an existing provision be revised or deleted, or that a newly drafted/proposed provision of the IFC be included, not included, or revised before inclusion in the OFC.

Petitions may be submitted to the SFM at any time. However, when the SFM begins an active code update, the SFM establishes firm dates for when a Petition can be submitted for consideration during that code update cycle. This is known as the “Petition Period.” If a Petition is received at any time other than during a Petition Period, the Petition will be catalogued and maintained until the next active revision cycle begins.

During a 5-year rule review, the Petition Period usually lasts around 60 days; during an interim rule update this period is usually shorter. Throughout the Petition Period, any person can submit a Petition regarding any OFC rule or section that is being reviewed. All Petitions that are received during the Petition Period – and any Petition that was submitted at any time prior to the formal Petition Period – will be considered during the update process.

Although the SFM makes every effort to consider all Petitions that are received during a code update cycle, **any Petition that is received after the official close of the Petition Period may not be considered for adoption until the next code revision cycle.** Therefore, it is important that Petitions are received prior to the end of the set Petition Period to ensure their consideration during the active code update cycle.

When the SFM opens the Petition Period, information is posted on social media and on the SFM’s website. The SFM also sends an e-mail to individuals or entities that have asked to be on the SFM’s code update stakeholder list.²

² To be added to the SFM’s stakeholder list and receive notifications regarding code updates and interpretations, please send an e-mail containing your name, title (if any), organization (if any), phone number, and e-mail address to: OhioFireCode@com.state.oh.us or contact the SFM’s Code Enforcement Bureau at (614) 728-5460.

Once a Petition is received, it is catalogued, assigned a 'Petition Number' and reviewed by an internal working group formed by the SFM. This work group is known as the SFM's 'Fire Code Work Group' (WG). The WG has primary responsibility for researching and processing all submitted Petitions and duly considers and takes action regarding each one. See Section B, below, for more information regarding the WG.

After the Petition Period closes and all Petitions have been processed, the SFM will issue a proposed draft of the new OFC (Draft OFC) as well as a compendium report – called the 'Report on Petitions' or 'ROP' – of all Petitions that were submitted. The ROP will list the substance of each Petition, the WG's action regarding each Petition and the justification therefore.

The Draft OFC and the ROP will be posted to the SFM's website so any interested party can review their content. The SFM will also notify stakeholders and Petitioners (if an e-mail address has been submitted) of the availability of the ROP and Draft OFC via an e-mail notification. The ROP will remain on the SFM's website for the remainder of the rule update process. The Draft OFC, containing all of the changes that are proposed by the SFM for inclusion in the OFC, will remain on the SFM's website throughout the Comment Period (see below).

Important Reminders Regarding the Petition Period:

- ❖ Petitions for rule changes are accepted by SFM at any time.
- ❖ Petitions submitted during an active code update cycle must be received prior to the end of the established Petition Period to ensure their consideration during that revision cycle.
- ❖ Petitions must be typed and submitted to the SFM on the 'Petition/Comment Form' which can be found on the SFM's website (www.com.ohio.gov/fire) under the "Ohio Fire Code" tab or by contacting the SFM's Code Enforcement Bureau (CEB) at:

State Fire Marshal / Code Enforcement Bureau
8895 E. Main Street, Reynoldsburg, OH 43068
Ph: (614) 728-5460 / (888) 276-0303
Fax: (614) 728-5168
E-mail: OhioFireCode@com.state.oh.us

- ❖ Petitions may be submitted on any topic pertaining to the OFC.
- ❖ Petitioners can file as many petitions as they choose; however, **each Petition must be limited to one topic.**
- ❖ All information in the Petition/Comment Form must be completed (e.g., all fields in the form must be filled out).

Exception: Petitions will be assigned a number by the WG after they are received. Therefore, when submitting a Petition, the "Petition No." field will be left blank.

- All Petitions must contain all of the following information:
 - The date the petition is submitted

- The number of the OFC section which is proposed for amendment, adoption or rescission
 - The OFC section numbers of all other sections which will be affected by the matter proposed
 - The name and address of the petitioner and the name of the entity (if any) that the Petitioner is filing the Petition on behalf of
 - The provisions of the OFC which are proposed for adoption, amendment or rescission stated in full and in the form specified below (i.e., using strikeout and underline features)
 - The reasons for and purpose of the matter proposed
 - The cost impact the proposed change is expected to have on those impacted by the provision
- All matter proposed to be deleted from the OFC should be indicated by striking through the text to be deleted (~~striketrough~~).
 - All proposed new matter to be inserted into the OFC should be inserted and underlined (underlined).
 - Incomplete or illegible Petitions may be rejected. Generally, however, the WG will return deficient Petitions to the submitter for revision and resubmission.
- ❖ Completed forms can be mailed, e-mailed, or faxed to the CEB as indicated above.
 - ❖ **The number assigned to the Petition will be used to identify that specific Petition throughout the remainder of the code update process.**
 - ❖ The submitter of a Petition may withdraw their Petition before the ROP is published, but cannot withdraw the Petition after the ROP is published.

When the Draft OFC and the ROP are published, the Petition Period concludes and the Comment Period commences.

2. Comment Period

The 'Comment Period' is a period when any interested party can submit a 'Comment' to the SFM regarding any of the changes proposed in the Draft OFC and/or regarding any Petition that was previously submitted. Comments can be submitted at any time during the Comment Period. Commenters may either advocate for or discourage adoption of any of the changes proposed in the Draft OFC and/or the Petitions. The Comment Period usually lasts from 30 to 60 days. It begins when the Draft OFC and the ROP are published and ends at a date established by the SFM on its website and/or in notices.

Also, during the Comment Period, the SFM holds "stakeholder meetings." These meetings provide stakeholders an additional opportunity and a specific forum to be heard and to convey their perspectives and ideas directly to the Marshal and the WG. Stakeholder meetings afford all interested parties the opportunity to ask questions regarding proposed OFC changes and/or regarding the WG's action regarding any Petition. They also provide the Marshal and the WG an opportunity to clarify any issues and ensure that the intent of a given Petition or Comment is fully understood.

Specific topics, dates and locations for stakeholder meetings are set and published on the SFM's website. In addition, the SFM sends an e-mail notification to those on its

stakeholder list and to those that have provided an e-mail address on their Petition. Stakeholders may also contact the CEB to inquire when meetings are scheduled.

Once a Comment is received, it is catalogued, assigned a “Comment Letter” and reviewed by the WG. The WG thoroughly researches and considers each Comment and prepares a response to each. The processes and actions of the WG are the same as those used by the WG when considering Petitions; see Section B, below, for more information regarding the WG.

After the Comment Period closes and all of the Comments have been processed, the WG prepares a compendium report of all submitted Comments and the WG’s response to and rationale for each Comment. This report is called the “Report on Comments” or “ROC.” The SFM also prepares a Revised Draft OFC, which incorporates additional changes made to the Draft OFC in accordance with actions taken on the Comments and stakeholder input. The ROC and Revised Draft OFC are then submitted to the Ohio Department of Commerce for approval.

After approval, the ROC and the Revised Draft OFC are publicly released and made available for review by any person via the SFM’s website. The SFM will also notify stakeholders, Petitioners and Commenters (if an e-mail address was submitted) of the availability of the ROC and Revised Draft OFC via an e-mail notification. The ROC and Revised Draft OFC will remain on the SFM’s website throughout the remainder of the formal rule adoption process.

Important Reminders Regarding the Comment Period:

- ❖ Comments are only accepted during the Comment Period.
 - The Comment Period will begin when the Draft OFC and ROP are published and will remain open no less than 30 days. The actual dates of the Comment Period will be published on the SFM’s website and sent via e-mail notification to stakeholders and Petitioners.
- ❖ Comments must be submitted to the SFM on the ‘Petition/Comment Form’ which can be found on the SFM’s website (www.com.ohio.gov/fire) under the “Ohio Fire Code” tab or by contacting the CEB.
- ❖ Comments may be submitted regarding any Petition or any rule change proposed in the Draft OFC.
- ❖ Commenters may file as many comments as they choose; however, each comment form should be limited to one topic and/or must address only the specific Petition referenced.
- ❖ All information in the Petition/Comment Form must be completed (e.g., all fields in the form including, but not limited to, name, address, phone number, and e-mail address, must be filled out).
 - **All Comments must reference the number of the Petition that the Comment is about.** The Petition Number can be found in the ROP and should be listed in the “Petition No.” field on the Petition/Comment Form.
 - All matters proposed to be deleted from the Draft OFC should be indicated by striking through the text to be deleted (~~strikethrough~~).

- All proposed new matter to be inserted into the Draft OFC should be inserted and underlined (underlined).
- Incomplete or illegible Comments may be rejected. Generally, however, the WG will return deficient Comments to the submitter for revision and resubmission.
- ❖ Completed Petition/Comment Forms can be mailed, e-mailed, or faxed to the CEB as indicated above. (See page 3.)
- ❖ The submitter of a Comment may withdraw the Comment before the ROC is published, but cannot withdraw it after the ROC is published.

With the publishing of the ROC and the Revised Draft OFC, the Comment Period concludes and the formal rule adoption process starts.

3. Common Sense Initiative (CSI) and e-Notification

CSI is a regulatory review process housed within the office of the Lieutenant Governor. CSI requires all state agencies that propose rules that will impact Ohio businesses to file the proposed rule(s) with the CSI Office for analysis. The CSI Office reviews the proposed rules to determine if the regulatory intent of the rule justifies the impact to businesses. This process enables individuals, businesses and other interested parties to track, review and comment on rules that are being proposed or reviewed by the SFM (or any other Ohio regulatory agency).

Parties interested in the rule adoption process may sign up for CSI e-Notification at <http://business.ohio.gov/reform/> and will thereafter receive e-notification regarding proposed rule changes from any specific regulatory agency or on any subject area that the user chooses. The steps in the CSI process are:

- ❖ Before filing with the CSI office, the SFM prepares a Rule Packet regarding the proposed rules that are being submitted for formal review to CSI and ultimately to JCARR (see below). The Rule Packet consists of the following:
 - A draft of the proposed new rule(s) (i.e., the 'Revised Draft OFC' as published at the end of the Comment Period)
 - A Business Impact Analysis
 - A Public Notice
 - The Public Notice is issued by the SFM to all affected stakeholders and notifies them of proposed changes to the OFC. Additionally, the Public Notice identifies the rules being affected by the proposed change(s) and provides a summary of the change(s). Any entity or individual may contact the SFM's CEB or submit an email request (see FN 2) to be added to the SFM's stakeholder list.
 - CSI also forwards the Public Notice to its stakeholder list.
- ❖ After the Rule Packet is submitted to the CSI Office, CSI staff reviews the packet and issues a recommendation regarding it. The recommendation may contain suggested changes to the proposed rules and/or may recommend that the SFM proceed with the rule adoption process.
- ❖ After receipt of the CSI recommendation, the SFM reviews the recommendation and may incorporate CSI recommendations, if any, into the Revised Draft OFC.

- ❖ The SFM must then file a response to the CSI office, known as a Letter of Acknowledgment.
 - The SFM's Letter of Acknowledgment to the CSI Office sets forth the SFM's response to any CSI recommendation and the SFM's justification therefore. It also includes the SFM's intent regarding how the SFM will proceed with the rule(s).

Once the SFM has filed its Letter of Acknowledgement with the CSI Office, it may proceed with the JCARR process.

4. Joint Committee on Agency Rule Review (JCARR)

JCARR is a joint committee of the Ohio Legislature comprised of 5 members of the Ohio House and 5 members of the Ohio Senate. The purpose of JCARR is to review proposed new, amended, and rescinded rules from Ohio's regulatory agencies (including the SFM) to ensure the proposed rules do not exceed the agency's rule-making authority. JCARR's process constitutes the formal rule review and adoption process in Ohio and involves meeting the requirements of R.C. Chapter 119 and section 3737.86. When the SFM files proposed rules with JCARR, it also files a draft of the proposed rules with the State Fire Council.

- ❖ To begin the JCARR process, the SFM files the following documents with JCARR:
 - A Business Impact Analysis (this will be the same document filed with CSI)
 - The CSI Recommendation regarding the proposed rule(s)
 - The SFM's Letter of Acknowledgment regarding the CSI Recommendation
 - A draft of the proposed rule(s) (i.e., the 'Revised Draft OFC' as published at the end of the Comment Period and amended during the CSI process)
 - A Rule Summary and Fiscal Analysis
- ❖ All of these documents are published in the "Register of Ohio" and are available through the JCARR filing system and/or the SFM's website.
- ❖ JCARR has 'jurisdiction' over the rules for 65 days.
 - Between days 1 and 30 of JCARR's jurisdiction period, JCARR follows its own internal procedures and processes the proposed rules.
 - Between days 31 and 40 of JCARR's jurisdiction period, the SFM must hold a public hearing in accordance with R.C. § 119 and OFC § 114.
 - The SFM's Public Hearing is open to the public and is held at the SFM's office (8895 E. Main Street, Reynoldsburg, OH 43068).
 - The date and time for the SFM's Public Hearing is established and published after the JCARR process is initiated. The date is published on the SFM's website and e-mail notifications are sent to all individuals on the SFM's stakeholder list and to all individuals and entities that filed a Petition or Comment who provided a valid e-mail address.

- At the SFM's Public Hearing, any interested party may submit oral and/or written testimony regarding any of the proposed rules. Written testimony may also be submitted at any time prior to the hearing or for a short period after the hearing during a time-frame established by the SFM (and announced at the hearing).
- After the SFM's Public Hearing, the SFM will prepare a Hearing Summary Report which summarizes all oral and/or written testimony received during the hearing process. The Hearing Summary Report is filed with JCARR and made available on the SFM's Website.
- Between days 41 and 65 of JCARR's jurisdiction, JCARR has a hearing regarding the proposed rules. At this JCARR Hearing, JCARR hears testimony from interested parties regarding the validity of the proposed rule(s) and takes formal action regarding them. JCARR either approves the rule(s) or recommends the rule(s) for invalidation.
 - If JCARR approves the rule(s), the SFM will move forward with 'final filing' of the rule(s) and their final adoption.
 - If JCARR recommends invalidation of the rule(s), the rule(s) are submitted to the full Ohio Legislature for consideration.
 - The Legislature may either approve the rule(s) or invalidate the rule(s). If the Legislature approves the rule(s), the SMF may move forward with final filing and adoption of the rule(s). If the Legislature invalidates or does not approve the rule(s), the SFM may not move forward with the adoption of the proposed rule(s).
- ❖ Upon approval and after the end of JCARR's jurisdiction, or 66 days after the submission of the rule(s) to JCARR, the SFM may "Final File" the proposed rule(s). This means that the rules in their final form are filed in the Register of Ohio. This becomes the official, final version of the rules.
- ❖ Ten days after the rule(s) are "Final Filed" (but not before the 10th day) the rules can become effective.
 - The actual effective date of the new OFC is set by the SFM; it can be set as the 10th day after final filing or as another day after that 10th day, as the SFM deems appropriate.
 - The effective date set by the SFM is announced and published on the SFM's website and in the Register of Ohio.

After the JCARR process concludes and the rule(s) are Final Filed, the SFM proceeds with publication and training regarding the then new Ohio Fire Code.

5. Publication and Training

When a new OFC is adopted, the final steps of the process are to have the new Ohio Fire Code published and to conduct training regarding significant changes between the prior and new OFC versions. The SFM works with the ICC to provide hard copy and on-line versions of the new OFC. The process of developing and printing the new code provisions on-line and in book format usually takes between 5 and 6 months. However, the official version of new OFC provisions can be accessed on the Register of Ohio which

is maintained by the Ohio Legislative Service Commission (hereinafter, "LSC") (www.registerofohio.state.oh.us/index.jsp). In addition, the SFM maintains the Revised Draft OFC (in red-lined format) on its website (www.com.ohio.gov/fire) until the published/book version becomes available.

In addition to publication, the SFM also develops training materials regarding the new OFC provisions. Depending on how extensively the OFC was updated training can include live, in-person training events hosted by the SFM throughout the state, on-line training courses hosted on the Ohio Fire Academy's 24/7 platform, and/or written training materials and Technical Bulletins which are distributed to SFM stakeholders and posted on the SFM's website.

With the conclusion of publication and training, the formal rule adoption process is complete. However, individuals affected by the rules can contact the SFM-CEB at any time for rule clarification or interpretation. If necessary, the SMF may develop additional training materials on specific, complex code changes and/or 'hot topics.'

B. SFM Ohio Fire Code Work Group

As discussed, all changes or modifications submitted to the SFM for consideration are reviewed by SFM's WG. This is true for internal Petitions or Comments made by the SFM as well. All SFM generated Petitions and Comments are submitted in the same manner as external stakeholder Petitions and Comments. They are assigned an identification number or letter and are included in the ROP and ROC, respectively with a justification for their inclusion in the OFC.

The WG consists of various SFM staff members including the State Fire Marshal, the Chief Deputy State Fire Marshal, the SFM's Division Legal Counsel and Assistant Division Legal Counsel, the CEB's Bureau Chief and Administrative Staff, and CEB Assistant Chiefs and Certified Fire Safety Inspectors as needed.

When the WG receives a Petition or a Comment it is catalogued and assigned a number (Petitions) or a letter (Comments) designation. This number or letter will be used throughout the review process in order to easily identify each proposed edit. The WG then reviews and researches the proposal and ultimately takes one of the following actions regarding each Petition and Comment submitted.

- Approve – the changes proposed in the Petition or Comment will be incorporated into the OFC. Proposals may be approved in whole or in part.
- Disapprove – the changes proposed in the Petition or Comment will not be incorporated into the OFC. Proposals may be disapproved in whole or in part.
- Modify – the changes proposed in the Petition or Comment will be modified in some manner and then approved for incorporation into the OFC. This generally means that the WG accepts the concept of the change, but not the specific wording of the proposal or its proposed location within the text of the OFC. It may also mean that only a part of the Petition or Comment will be accepted by the WG. The WG may amend the proposed language, delete some of the proposed language, and/or make other modifications to the language and/or its placement in the OFC.
- Occasionally, the WG may combine Petitions or Comments for the purposes of response. This is done if a large number of proposals are received with the same recommendations and with similar substantiation. If this is done, the statement regarding the Petitions or Comments will contain a summary of the submitted material. The WG will then formulate one response to all of the like Petitions or Comments.

- Finally, sometimes the WG makes minor edits to a Petition or Comment. For example, non-substantive typographical errors may be corrected, or numbering may be corrected in order to accurately cite the OFC section that the Petition or Comment addresses. Ultimately, with regard to formatting, the WG must ensure that the OFC conforms to LSC Guidelines (found at: www.lsc.state.oh.us/membersonly/127rulemaking.pdf). Therefore, if a Petition or Comment is submitted with an inaccurate rule number or legal code citation, or other non-substantive error, the WG will edit the Petition or Comment. These types of edits are not considered 'modifications' of the Petition or Comment, but will be noted for clarity.

In addition, the SFM's workgroup may consider and/or make non-substantive changes to provisions throughout the OFC. These non-substantive changes may include addressing acronyms, capitalization, verb tense and other minor punctuation issues. These changes may be made by the WG with or without Petition or Comment, but are usually made in one general Petition addressing 'non-substantive' edits to the OFC. The changes or edits are identified in the proposed rules using underline and/or strikethrough editing notations.

For each action taken by the WG, the WG provides a statement, usually technical in nature, regarding the reason(s) for the action taken. The statement is intended to be sufficiently detailed so as to convey the WG's rationale for its action. Once the WG has completed its review and written responses to each Petition or Comment, the Marshal approves the final form of the response and it is added to the ROP or ROC, respectively.

C. Emergency Rule Adoption

In addition to the above, rule updates can happen pursuant to an emergency. Either the Governor or the Director and Marshal can determine that an emergency warranting a rule change exists. If the Governor determines that an emergency exists, the Governor may allow the SFM to proceed with an emergency rule adoption which becomes effective immediately without going through the normal rule adoption procedures that are required by R.C. § 119 and discussed above. If the Director and Marshal determine that an emergency exists and that a rule change is needed in an expedited manner, they may request that the Governor suspend the normal rule adoption procedures.

If an emergency rule does go into effect, it remains in effect for only 120 days. An emergency rule expires 120 days after it goes into effect. During that 120-day period, however, the SFM may adopt the rule in a 'non-emergency' manner following the formal rule adoption process as outlined above.