
MEMORANDUM

TO: RULE FILERS AT STATE INSTITUTIONS OF HIGHER EDUCATION
FROM: JULIE HARTZELL, LSC RULES UNIT ADMINISTRATOR
SUBJECT: SENATE BILL 3 CHANGES TO RULE FILING PROCEDURES
DATE: JULY 28, 2014

Amended Substitute Senate Bill 3 was signed by Governor Kasich on June 17, 2014, and has an effective date of September 17, 2014. This act changes the current rule filing procedures followed by state institutions of higher education. These changes are outlined below:

Definition

Enacted section 3345.033 of the Revised Code defines a “state institution of higher education” as a state university identified in section 3345.011 of the Revised Code, the Northeast Ohio Medical University, or a community college, state community college, or technical college.

Publication of rules on state institution of higher education websites

When a state institution of higher education adopts a rule, the state institution of higher education must post the rule on its website. A state institution of higher education must maintain the posting of its rules on its website, and must periodically verify the posting. A state institution of higher education is not entitled to rely on a rule that is not currently posted on its website. (R.C. 3345.033)

This means that all adopted rules must be published on the state institution’s website and must be kept up-to-date. If the state institution of higher education adopts a new rule, that rule must be published to the website. If the state institution of higher education amends an existing rule, the content of that rule must be updated on the website to reflect the changes. If a state institution of higher education rescinds a rule, that rule must be removed from the website or otherwise indicated as a rescinded rule. Publication of existing rules on the state institution’s website must be done as soon as possible but no later than six months after the effective date of the act. (Section 5 of Am. Sub. S.B. 3)

Publication of rules in the Register of Ohio and online Ohio Administrative Code

When a state institution of higher education adopts a rule, the director of the Legislative Service Commission (LSC) must publish the rule in the Register of Ohio (www.registerofohio.state.oh.us). Adopted rules must also appear in the online version of the Ohio Administrative Code (OAC) published by Lawriter (codes.ohio.gov). (R.C. 3345.033)

Rules filed electronically by a state institution of higher education will be published in the Register of Ohio following the current publication and purgation schedule (www.registerofohio.state.oh.us/jsps/public/pubPurg.jsp). This means a rule will appear in the Register the business day following the date of filing. Rule-filing documents will be transmitted by LSC to the commercial publishers which will ensure publication by Lawriter.

Electronic filing of rules with JCARR

When a state institution of higher education files a rule, it now must also electronically file the rule with the Joint Committee on Agency Rule Review (JCARR). However, the rule is not subject to review by JCARR. (R.C. 3345.033)

No changes to current filing practices. A state institution of higher education will file a rule in the Electronic Rule-Filing (ERF) System using the current filing procedures. One filing action in the ERF System will transmit the rule to both LSC and JCARR.

Inclusion of rules in RuleWatch Ohio

Rules filed by state institutions of higher education will now be included in the RuleWatch Ohio notification system. (R.C. 3345.033)

RuleWatch Ohio (rulewatch.ohio.gov) allows individuals to track a specific rule they are interested in, or rules that cover a particular area of interest. By creating an account on the RuleWatch Ohio website, subscribers can receive email alerts when there is filing activity on any of the rules they have selected. Prior to Am. Sub. S.B. 3, RuleWatch Ohio subscribers could not subscribe to rules adopted by state institutions of higher education. With the enactment of Am. Sub. S.B. 3, RuleWatch Ohio subscribers will be able to subscribe to the rules of state institutions of higher education and can receive email alerts anytime the state institution of higher education files a rule in the ERF System.

Refiling of existing rules

Section 5 of the act requires state institutions of higher education to re-file all currently existing rules with the Director of LSC and with JCARR. This re-filing is not subject to review by JCARR or by the Director of LSC, however the Director of LSC must publish the re-filed rules in the Register of Ohio, and transmit the rules to Lawriter for publication in the online OAC. This re-filing of existing rules must be done as soon as possible but no later than six months after the effective date of the act.

Existing rules previously filed with the Director of LSC are insufficient to comply with this requirement. Rather, the re-filing of all currently existing rules with the Director of LSC and

JCARR is required to achieve compliance. A state institution of higher education is not entitled to rely on a rule until it has been re-filed with the Director of LSC and JCARR.

State institutions of higher education must submit all existing rules to LSC in order to create an accurate base of the rules in the OAC. You will accomplish this by filing each of your rules as a new rule but using the current effective date as the effective date entered when filing. Rules with the same current effective date can be filed in a package together. Rules with different current effective dates must be filed in separate packages. To comply with this re-filing requirement, state institutions of higher education will need to use this process:

- LSC can provide state institutions of higher education with an inventory of currently existing rules on file. To request this information for your institution, please contact the ERF Help Desk at 614-387-2078 or erfhelpdesk@lsc.state.oh.us.
- State institutions of higher education should review the spreadsheet or any internal records of currently existing rules and contact the ERF Help Desk with any questions.
- State institutions of higher education must locate the text of the currently effective rules in order to complete the re-filing required by Am. Sub. S.B. 3.
- State institutions of higher education must then follow current procedures and, if a version prepared in Word or another word processing application does not already exist, prepare currently effective rules in such program and save them as PDFs for filing in the ERF System.
 - Another option now available to state institutions of higher education is to use the Rule Authoring Software (RAS) that is used by executive agency rule filers. There is no licensing cost associated with RAS. RAS is an application available to state agencies for the purpose of drafting administrative rules. This application allows users to create and save documents in the XML file format for filing in the ERF System. Benefits to using RAS rather than a word processor include: RAS takes care of the formatting of paragraphs within a rule, when striking paragraph (A)(4), RAS will automatically renumber the paragraphs that follow; rules drafted in RAS and filed in the ERF System are maintained by LSC so the next time you need to file the rule, LSC will prepare the most recent effective version for your use. Training classes are available for RAS and making the transition to using RAS for rule drafting would not require retyping of all rules as you can copy and paste paragraphs into RAS. If your institution is interested in making the transition to RAS, please contact the ERF Help Desk.
- Once the rules are prepared, state institutions of higher education must create a rule-filing package in the ERF System and file with LSC and JCARR. Again, the filing procedure will not change. You will file as you always have and the filing will be submitted to both LSC and JCARR. However, because this is a re-filing of currently existing rules, the current effective date must be retained. This means if you have ten

rules and two have an effective date of 1/1/07, six have an effective date of 7/1/09, and two have an effective date of 3/10/13, you will need to create three packages in the ERF System in order to file the rules with the correct effective dates. For this re-filing, rules will be added to packages as new rules.

- When filing the package, you will be prompted to enter an effective date; enter the most recent effective date of the rule. This will be a date in the past rather than the usual future effective date. Because the effective date you will be entering occurred in the past, the ERF System will present you with a warning that the effective date is invalid. You should click through the warning and complete the filing.

Example – if an existing rule has prior effective dates of 1/1/08 and 4/12/12 and a current effective date of 7/1/14, when completing the Am. Sub. S.B. 3 re-filing, the user will enter 1/1/08 and 4/12/12 as prior effective dates and 7/1/14 as the effective date on the filing. The ERF System will present the user with a message warning them that the effective date entered may be incorrect. Filers should ignore this message and will need to click through the warning to complete the filing.

- If you need to make changes to the content of a rule, you must first complete this Am. Sub. S.B. 3 re-filing process, filing the currently effective text. Once that submission is complete, you can then make the necessary changes to the text and file the rule as an amended rule.
- If you have currently effective rules that are no longer relevant, it is not necessary to rescind those rules; just do not include them in your Am. Sub. S.B. 3 re-filing. Section 5 of the act states that “a state institution of higher education is not entitled to rely on a rule that is required to be re-filed...and that has not been so re-filed.” Thus, failure to file an existing rule as part of the re-filing process will essentially render the rule no longer effective without the need to rescind the rule. Similarly, **if your institution fails to re-file any rules within the six months following the effective date of Am. Sub. S.B. 3, your institution will no longer have any effective rules.**
- Any rule filings made using the ERF System prior to September 17, 2014, do not take the place of this Am. Sub. S.B. 3 re-filing process. For example, if you file a rule in the ERF System on September 2, 2014, you will still need to follow the process outlined above to complete the Am. Sub. S.B. 3 re-filing process during the six months following September 17, 2014.

Training is available for both RAS and the ERF System. Training dates and course descriptions are available at filers.registerofohio.state.oh.us/jsp/trainingMaterial.jsp.

If you have any questions about the information included in this memo, or about compliance with Am. Sub. S.B. 3 generally, please contact the ERF Help Desk at 614-387-2078 or erfhelpdesk@lsc.state.oh.us.