



Ohio Administrative Code

Rule 5160-71-04 Chapter 119. hearings conducted under authority of section 5111.914 of the Revised Code: notice and requesting a hearing.

Effective: August 1, 2011

(A) Written notice of intended action.

(1) Whenever an issuing state agency proposes to take an action under authority of section 5111.914 of the Revised Code, the issuing state agency shall send the affected party written notice of the agency's intended action ("notice of intended action"). The issuing state agency shall mail, certified mail, return receipt requested, such notice, which shall at a minimum include all of the following:

(a) Notice of the specific action or actions the agency intends to take;

(b) Charges or reasons for the proposed action or actions;

(c) Statute or rule directly involved;

(d) A statement that the affected party is entitled to a prior hearing if the hearing is requested within thirty days from the date of mailing the notice;

(e) A statement that the affected party may appear at a hearing in person or through an attorney;

(f) A statement that the affected party may present positions entirely in writing, may examine evidence and adverse witnesses at the hearing, and may introduce evidence and bring forth witnesses on behalf of the affected party; and

(g) A statement that rules governing affected party hearings before the issuing state agency are to be found in Chapter 5101:6-51 of the Administrative Code.

(2) The issuing state agency shall also mail a copy of the notice to the affected party's attorney or other representative of record. To qualify as an attorney or representative of record, the party or the attorney or representative must notify the issuing state agency, in writing, that the attorney or



representative is to be designated the attorney or representative of record. The notification must include the address where the issuing state agency should mail the notice to the attorney or representative of record. The mailing of notice to the affected party's attorney or representative is not deemed to perfect service of the notice. Failure to mail a copy of the notice to the attorney or representative of record shall not result in failure of otherwise perfected service upon the affected party. In those instances where an affected party is a corporation doing business in Ohio or is incorporated in Ohio, the mailing of notice to the corporation's statutory agent pursuant to sections 1701.07 and 1703.19 of the Revised Code shall perfect service provided there is compliance with all the requirements of paragraph (A) of this rule.

(3) When the notice required by paragraph (A) of this rule is returned because of inability to deliver, the issuing state agency may either have its employee make personal delivery of the notice or cause the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the affected party is located. The issuing state agency shall mail, first class mail, a copy of the first publication of the notice in a newspaper to the affected party at the last known place of residence or business. The notice is deemed received as of the date of last publication. Nothing in this rule is to be construed to limit or otherwise prohibit the utilization of sections 1701.07 and 1703.19 of the Revised Code to perfect service of process.

(B) Request for a hearing.

(1) Any request for a hearing made as the result of notice issued pursuant to paragraph (A) of this rule must be made in writing and mailed or delivered to the issuing state agency within thirty calendar days of the mailing or personal delivery of the notice. If a request for a hearing is mailed or delivered to the issuing state agency, the request is deemed to have been made as follows:

(a) If the request is mailed by certified mail, the request is deemed to have been made as of the date stamped by the U.S. postal service on its receipt form (PS form 3800 or any future equivalent postal service form).

(b) If the request is mailed by regular U.S. mail, the request is deemed to have been made as of the date of the postmark appearing upon the envelope containing the request. In those cases where a



postmark is illegible or fails to appear on the envelope, the request is deemed to have been made as of the date of its receipt by the issuing state agency as evidenced by the agency's time stamp.

(c) If a request for a hearing is mailed or personally delivered to a party or address other than the issuing state agency, the request is deemed to have been made as of the date of its receipt by the issuing state agency as evidenced by the agency's time stamp.

(d) If a request for a hearing is personally delivered to the issuing state agency, the request is deemed to have been made as of the date of its receipt as evidenced by the agency's time stamp.

(e) If a request for a hearing is made by facsimile transmission or by electronic mail, the request is deemed to have been made as of the date of its receipt as evidenced by the receipt date generated by the facsimile transmission or as shown on the electronic mail received by the issuing state agency.

(2) Any request for a hearing made as the result of notice issued by publication pursuant to paragraph (A)(3) of this rule must be made in writing and delivered to the proper address listed in the notice of the issuing state agency within thirty calendar days of the notice's final date of publication.

(3) All requests for hearings must clearly identify both the affected party involved and the proposed action that is being contested.

(4) A request for a hearing is not valid if it is delivered to ODJFS.

(C) If an affected party fails to request a hearing or if the request is not timely, the issuing state agency shall request ODJFS to issue a final and binding order of adjudication adopting and ratifying the allegations contained in the notice of intended action.