

## Frequently Asked Questions:

### 1. What is a Rule?

The APA (Administrative Procedure Act) defines the term Rule in R.S. 49:951(8):

*Rule* means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency.

*Rule* includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

### 2. Who can initiate Rule-Making?

Any government entity that has statutory rule-making authority can make rules.

Also, according to the APA, specifically R.S. 49:964 the general public can initiate Rule-Making: "An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, considerations, and disposition. Within ninety days after submission of a petition, the agency shall either deny the petition in writing, stating reasons for the denial, or shall initiate rule making proceedings in accordance with this Chapter."

The APA also gives the legislature authority to do rule-making by Concurrent Resolution (R.S. 49:969): "In addition to the procedures provided in R.S. 49:966 for review of the exercise of the rulemaking authority delegated by the legislature to state agencies, as defined by this Chapter, the legislature, by Concurrent Resolution, may suspend, amend, or repeal any rule or regulation or body of rules or regulations, or any fee or any increase, decrease, or repeal of any fee, adopted by a state department, agency, board, or commission. The Louisiana Register shall publish a brief summary of any Concurrent Resolution adopted by the legislature pursuant to this Section. Such summary shall be published not later than forty-five days after signing of such Resolution by the presiding officers of the legislature."

### 3. What is the first step in creating a Rule?

The first step in rule-making is determining what your rules are to achieve. You should consider the scope of authority given to your agency and the responsibilities of your agency. Some questions to ask before Rule-Writing:

1. What needs to be accomplished by this rule?
2. What are clear guidelines to accomplish this goal?
3. Are these guidelines regulatory in nature?
4. Are these guidelines consistent with the authority given to the agency?
5. Will these guidelines be effective in the future?

**\*\*Reviewing other rules in the Louisiana Administrative Code and Louisiana Register can give you general ideas.\*\***

### 4. What is the shortest timeframe that a Proposed Rule can be finalized?

The answer to this question depends upon the content of the Rule itself. If the Rule is non-controversial, then the answer can be 4 months (For more information, go to the Best Case Scenario Link on our Training Page.)

### 5. What is a Notice of Intent?

A Notice of Intent is a Proposed Rule. R.S. 59:961 (A)(2) describes the contents of a Notice of Intent:

#### **§961. Procedure for adoption of rules**

A.(1) An agency shall give notice of its intention to adopt, amend, or repeal any rule and a copy of the proposed rules at least ninety days prior to taking action on the rule.

(2) The notice shall include all of the following:

- (a) A statement by the agency clearly describing the proposed action being taken.
- (b) A statement by the legislative fiscal office on whether the proposed action will result in a fiscal impact.
- (c) A statement by the legislative fiscal office on whether the proposed action will result in an economic impact.
- (d) The name of the agency representative responsible for responding to inquiries about the intended action.
- (e) The time, place, and manner in which interested persons may present public comment regarding the intended action.
- (f) A statement that the intended action complies with the statutory law administered by the agency, including a citation of the enabling legislation.
- (g) A preamble explaining the basis and rationale for the intended action and summarizes the information and data supporting the intended action.
- (h) All of the following statements concerning the proposed action:
  - (i) The impact on family formation, stability, and autonomy required by R.S. 49:972.
  - (ii) The impact on child, individual, or family poverty in relation to individual or community asset development required by R.S. 49:973.
  - (iii) The economic impact on small businesses required by R.S. 49:974.4.
  - (iv) The small business regulatory flexibility analysis required by R.S. 49:974.5.

## 6. What is an Emergency Rule?

An Emergency Rule is a temporary rule that can be effective upon adoption. R.S. 49:962 describes the conditions that constitute an Emergency situation:

A.(1) In extraordinary circumstances an agency may adopt an emergency rule as an alternative to the rulemaking provisions provided for in R.S. 49:961. An emergency rule may be adopted by an agency without prior notice or a public hearing for any of the following reasons:

- (a) To prevent imminent peril to the public health, safety, or welfare.
- (b) To avoid sanctions or penalties from the United States.
- (c) To avoid a budget deficit in the case of the medical assistance program.
- (d) To secure new or enhanced federal funding.
- (e) To effectively administer provisions of law related to the imposition, collection, or administration of taxes when required due to time constraints related to congressional, legislative, or judicial action.

## 7. When are the monthly deadlines for promulgation?

Noon on the 10th of any given month is the deadline for publication in the *Louisiana Register*. If the 10th falls on a weekend, then the deadline moves to the Friday before. \*\*Reports to the House of Representatives and the Senate are due on the same day.\*\*

## 8. What happens if I want to make substantive changes to my proposed Rule after I've already printed my Notice of Intent?

The APA answers this question in R.S. 49:966(H)(2):

Substantive changes to a rule proposed for adoption, amendment, or repeal occur if the nature of the proposed rule is altered or if the changes affect additional or different substantive matters or issues not included in the notice required by R.S. 49:961. Whenever an agency seeks to substantively change a proposed rule after notice of intent has been published in the Louisiana Register pursuant to R.S. 49:961, the agency shall hold a public hearing on the substantive changes preceded by an announcement of the hearing in the Louisiana Register. A notice of the hearing shall be mailed within ten days after the date the announcement is submitted to the Louisiana Register to all persons who have made request of the agency for such notice. Any hearing by the agency pursuant to this Paragraph shall be held no earlier than thirty days after the publication of the announcement in the Louisiana Register. The agency hearing shall conform to R.S. 49:961, and a report on the hearing shall be made to the oversight committees in accordance with Subparagraph (D)(1)(b) of this Section. The agency shall make available to interested persons a copy of the report no later than one working day following the submittal of such report to the oversight committees. Any determination as to the rule by the oversight committees, prior to gubernatorial review as provided in Subsection G of this Section, shall be made no earlier than five days and no later than thirty days following the day the report required by this Paragraph is received from the agency.

## 9. What is the submittal process for Rule publication?

Photocopy<sup>1</sup> the entire Notice of Intent from the *Louisiana Register* (including page numbers and document number at the end of the fiscal statement) and show any changes/revisions in red.

If the Notice of Intent referenced the reader to rule text in an Emergency Rule, photocopy<sup>1</sup> the entire Notice of Intent from the *Louisiana Register* (including page numbers and document number at the end of the fiscal statement) and photocopy<sup>1</sup> the entire Emergency Rule from the *Louisiana Register* (including page numbers and document number at the end of the document); show any changes/revisions in red.

If there are substantive amendments to the Notice of Intent pursuant to R.S. 49:966(H)(2), include a photocopy<sup>1</sup> of the Potpourri notice as well as the original Notice of Intent.

<sup>1</sup> The *Louisiana Register* pages needed for the required photocopy may be printed from the Office of the State Register's website.