

Overview of the Agency Rulemaking Process in Florida

“Rule” means “each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.” § 120.52(16).

An agency can engage in rulemaking only where a statute explicitly authorizes or requires the agency to do so. § 120.54(1)(e). For example, the Autonomous Practice by an APRN statute states that the Board of Nursing “shall adopt rules to implement this section.” § 464.0123(8), Fla. Stat.

1. Notice of Rule Development: To begin the rulemaking process, the board must publish a rule development notice in the Florida Administrative Register, which must include:

- the subject area to be addressed
- provide a short, plain explanation of the purpose and effect of the proposed rule
- cite the specific legal authority for the proposed rule
- include the preliminary text of the proposed rule, if available
- or include a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, if available. § 120.54(2)(a), Fla. Stat.

2. Workshop: Any “affected person” may submit a written request for a public workshop regarding the rule being developed. The board must hold the requested workshop unless the head of the board explains in writing why a workshop is unnecessary. Usually, if a workshop is requested, the board will grant the request and issue a notice in the Florida Administrative Register at least 14 days before the scheduled workshop. § 120.54(2)(c), Fla. Stat.

At the workshop, interested parties will make public comments and ask questions. The board members will openly discuss the rule being developed and may vote on the proposed rule language.

3. Drafting the Proposed Rule: The board will usually discuss the draft language of a proposed rule during a workshop or other public meeting. In many cases, interested organizations will submit proposed rule language for the board’s consideration. The board’s attorney will assist with the proposed rule language, which must be approved by the board chair. § 120.54(3)(a), Fla. Stat.

4. Statement of Estimated Regulatory Costs: When the board publicly discusses the draft rule language, it will also discuss the potential economic impact of the rule. If the board

concludes that the proposed rule will have an adverse impact on small business or is likely to increase regulatory costs in excess of \$200,000 within one year after its implementation, then the board must prepare a statement of estimated regulatory costs (SERC). § 120.541(1)(b), Fla. Stat.

5. Notice of Proposed Rule: Once the proposed rule language is approved by the board chair, the board will publish a notice of proposed rule in the Florida Administrative Register. This notice must include:

- a short, plain explanation of the purpose and effect of the proposed action
- the full text of the proposed rule or amendment and a summary thereof
- the statute that authorizes the rulemaking
- the statute being implemented or interpreted by the proposed rule
- a summary of the statement of the estimated regulatory costs (SERC), if required
- that members of the public may request a public hearing on the proposed rule within 21 days after its publication
- that members of the public may provide the board with information about estimated regulatory costs or recommend a lower cost regulatory alternative within 21 days after publication of the notice. § 120.54(3)(a)1., Fla. Stat.

6. Joint Administrative Procedures Committee: Soon after publishing the notice of proposed rule, the board must submit the proposed rule and related information to the Joint Administrative Procedures Committee (JAPC). § 120.54(3)(a)4., Fla. Stat. JAPC is composed of five state Senators and six state Representatives who have the power to object to a proposed rule. The current JAPC membership is listed on the following website:

<https://www.japc.state.fl.us/>

JAPC's chief attorney will review the proposed rule and may send a letter to the board attorney asking for an explanation regarding any potential legal issues she identifies. In our experience, JAPC is more likely to question the validity of a rule when it is opposed by powerful interest groups.

If JAPC sends a letter to the board attorney with questions about the proposed rule, the board attorney will respond in writing to each question by either countering JAPC's legal position or advising that the rule will be amended to address JAPC's concern.

7. Public Hearing: If any "affected person" requests a public hearing within 21 days after publication of the notice of proposed rule, the board must hold a public hearing to give affected persons an opportunity to present evidence and argument.

Any relevant material submitted to the board within 21 days after publication of the notice of proposed rule must be considered by the board and made part of the rulemaking record. § 120.54(3)(c)1., Fla. Stat.

At the public hearing, the board may discuss potential amendments to the proposed rule language and may vote to adopt one or more amendments.

8. Modification of Proposed Rule: After the public hearing, or after the time for requesting a hearing has expired, if no substantive changes have been made to the proposed rule, then the board must notify JAPC at least 7 days before filing the rule for adoption.

The board may only make a substantive change to the proposed rule if the change is (1) supported by the public hearing record; (2) responsive to the written material submitted to the board; or (3) responsive to a comment or proposed objection by JAPC.

If a substantive change is made to the proposed rule, then the board must publish a notice in the Florida Administrative Register at least 21 days before filing the rule for adoption. § 120.54(3)(d)1., Fla. Stat.

9. JAPC Objection process: JAPC may object to a proposed rule at any time, but rarely votes to formally object. Usually, if JAPC signals its intent to object, the board will modify or withdraw the proposed rule. If JAPC intends to object to a proposed rule and then a rule challenge is filed, JAPC will usually defer any action pending the outcome of the rule challenge. See § 120.545 for more information about the JAPC objection process.

10. Rule Challenge: Opponents of the proposed rule who are “substantially affected” may file a rule challenge petition with the Division of Administrative Hearings (DOAH) within 21 days after publication of the notice of proposed rule, 10 days after the final public hearing, 20 days after the board files a notice of modifying/changing its proposed rule, or 20 days after the SERC, if any, is made publicly available. § 120.56(2)(a), Fla. Stat.

An administrative law judge (ALJ) will be assigned within 10 days after a facially valid petition is filed, and the hearing will be held within 30 days thereafter, unless the parties agree otherwise or the ALJ finds good cause for a delay. § 120.56(2)(c), Fla. Stat.

Other substantially affected persons or organizations “may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings” by filing a motion to intervene. § 120.56(1)(e), Fla. Stat.

The ALJ must render its decision within 30 days after the rule challenge hearing unless the parties agree to extend that time period. § 120.56(1)(d), F.S.

11. Appeal: After the ALJ in the rule challenge proceeding issues a final order, any party may file a notice of appeal with the First District Court of Appeal or another District Court of Appeal where the party resides. See § 120.68, Fla. Stat. for more information about the appellate process.