

Frequently Asked Questions:

1. What is a Rule?

The APA (Administrative Procedure Act) defines the term Rule in R.S. 49:951(6): "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. 49:953 (C), 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. 49:968 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 simply a technical amendment, then the answer is 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. 59:953 (A)(1) describes the contents of a Notice of Intent:

§953. Procedure for Adoption of Rules

A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1)(a) Give notice of its intended action and a copy of the proposed rules at least ninety days prior to taking action on the rule. The notice shall include:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved;

(ii) A statement, approved by the legislative fiscal office, of the fiscal impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no fiscal impact will result from such proposed action;

(iii) A statement, approved by the legislative fiscal office, of the economic impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no economic impact will result from such proposed action;

(iv) The name of the person within the agency who has the responsibility for responding to inquiries about the intended action;

(v) The time when, the place where, and the manner in which interested persons may present their views thereon; and

(vi) A statement that the intended action complies with the statutory law administered by the agency, including a citation of the enabling legislation.

(vii) A statement indicating whether the agency has prepared a preamble which explains the basis and rationale for the intended action, summarizes the information and data supporting the intended action, and provides information concerning how the preamble may be obtained.

(viii) A statement concerning the impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

(ix) A statement concerning the impact on child, individual, or family poverty in relation to individual or community asset development as set forth in R.S. 49:973.

6. What is an Emergency Rule?

An Emergency Rule is a temporary rule that can be effective upon adoption. R.S. 49:953(B)(1) describes the conditions that constitute an Emergency situation and the general methodology:

"If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided in Subsection A of this Section and within five days of adoption states in writing to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Department of the State Register, its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The provisions of this Paragraph also shall apply to the extent necessary to avoid sanctions or penalties from the United States, or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs. The agency statement of its reason for finding it necessary to adopt an emergency rule shall include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria provided in this Paragraph for adoption of an emergency rule."

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. 49:968 (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 such changes affect additional or different substantive matters or issues not included in the notice required by R.S. 49:953(A)(1). 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. 49:953(A)(1), 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. 49:953(A)(2)(b), 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 such 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?

Photocopy¹ 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, photocopy¹ the entire Notice of Intent from the *Louisiana Register* (including page numbers and document number at the end of the fiscal statement) and photocopy¹ 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.

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