

Florida

State Regulatory Processes

Rulemaking Process

The Department of State's Administrative Code and Register Section is the filing point for rules promulgated by state regulatory agencies. Rules are published in the Florida Administrative Code. The program is also responsible for publishing the (FAR). The is a daily publication which gives the public current information about the status of rules moving through the rulemaking process including proposed rules; emergency rules; and notices of change, corrections and withdrawals.

Rulemaking?

"Rulemaking" is defined as the adoption, amendment or repeal of a rule. In its simplest form, rulemaking consists of drafting the rule text, providing notice to the public, accepting public comment and filing the rule for adoption.

A grant of rulemaking authority and a specific law to be implemented are required before an agency may draft a new rule, amend a current rule, or repeal an existing rule (reference). Furthermore, an agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Florida Rulemaking Process

Phase 1: Rule Development

Requirement to Rule: Agencies must begin rulemaking as soon as "feasible and practicable." Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions. If the Legislature passes an act requiring rules, the agency must publish a Notice of Rule Development within 30 days.

Notice of Rule Development: Published in the Florida Administrative Register (FAR). It must include the subject area, the purpose/effect, and the statutory authority.

Workshops: An agency may hold public workshops for purposes of rule development or information gathering for the preparation of the statement of estimated regulatory costs. It must hold a workshop if an affected person requests one in writing, unless the agency head explains in writing why it is unnecessary.

Negotiated Rulemaking: For complex or controversial rules, an agency may convene a committee of representatives from interested groups to draft a consensus-based rule.

Phase 2: Formal Proposal

Notice of Proposed Rule: Published in the FAR at least 28 days before the intended adoption and within 180 days of the Rule Development notice.

Cost Analysis: An agency must prepare a Statement of Estimated Regulatory Costs (SERC) if the rule:

Impacts small businesses adversely.

Increases regulatory costs by more than \$200,000 in the aggregate within one year.

Lower Cost Alternatives: Any person may choose to provide a statement about lower cost regulatory alternatives. Agencies must choose the alternative that imposes the lowest cost on regulated persons while still accomplishing the statutory objective.

Phase 3: Public Participation & Review

Request for Hearing: Any affected person has 21 days after the notice to request a public hearing. If requested, the hearing is mandatory.

Small Business Oversight: If small businesses are affected, the agency must notify the Rules Ombudsman in the Governor's office. The agency must adopt any feasible alternatives offered by the Ombudsman that reduce the burden on small businesses.

Committee Review: At least 21 days before the adoption date, the agency must file the proposed rule and supporting justifications with the committee.

Phase 4: Modification & Final Filing

Notice of Change/Withdrawal: If the agency changes the rule text (other than technical corrections) based on hearings or comments, it must publish a Notice of Change in the FAR at least 21 days before filing for adoption.

Filing for Adoption: The rule is filed electronically with the Department of State. It cannot be filed sooner than 28 days (but no later than 90 days) after the original notice.

Effective Date: Rules generally become effective 20 days after being filed with the Department of State, unless a later date is specified.

Emergency Rulemaking

Criteria for Use: An agency may adopt an emergency rule if it finds that an immediate danger to the public health, safety, or welfare requires such action.

Procedure: The agency must

File a specific, written statement of the facts and reasons for finding an immediate danger.

Take steps to inform affected persons of the rule's adoption.

Limitations:

Duration: Emergency rules are effective for no more than 90 days.

Renewability: They are generally not renewable. To keep the regulations in place longer, the agency must initiate the Regular Rulemaking Process while the emergency rule is active.

Challenge: The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable.

Florida Register

Florida Administrative Procedure Act