

Rulemaking Policy

	Louisiana Department of Health (LDH)	
	Policy Number	63.2
	Content	Policy and procedures for adopting, amending and repealing rules as required by the Louisiana Administrative Procedure Act
	Effective Date	April 17, 2019
	Inquiries to	Rulemaking Coordinator Office of the Secretary P. O. Box 629 Baton Rouge, LA 70821-0629 LDHRulemaking@la.gov

LDH is committed to fostering, cultivating and preserving a culture of equity, diversity and inclusion. Our human capital is the most valuable asset we have. The collective sum of the individual differences, life experiences, knowledge, inventiveness, innovation, self-expression, unique capabilities and talent that our employees invest in their work represents a significant part of not only our culture, but our Department’s reputation and achievement as well.

If there is a discrepancy between an LDH Policy and a Program Office or facility policy, the LDH policy shall govern/overrule/supersede the conflicting section within the Program Office or facility policy.

I. STATEMENT OF POLICY

It is the policy of the Louisiana Department of Health (LDH) to fully adhere to the [Louisiana Administrative Procedure Act](#) (APA), [R.S. 49:950 et. seq.](#), in adopting, amending, or repealing agency rules.

The purpose of this policy is to provide uniform procedures for rulemaking to be followed by all LDH agencies and assure adherence to all provisions of the APA relative to adopting, amending, or repealing rules. This policy also includes a reporting procedure to provide the LDH Office of the Secretary necessary information to complete the annual report on rulemaking by LDH to the legislature as required by the APA.

II. APPLICABILITY

This policy shall apply to all agencies, offices, divisions, bureaus, and sections of LDH. This policy shall remain in effect until revised or rescinded.¹

III. DEFINITIONS

Unless otherwise prescribed herein, when used in this policy, the words defined in this section shall have the meaning set forth below:

¹ See LDH Rulemaking SharePoint site for additional procedural guidance.

- A. **Agency** – Any office, bureau, division, and/or section within LDH that promulgate rules, regulations, policies, decisions, etc. pursuant to implementation of the Constitution or laws of the United States or the State of Louisiana. The “Initiating Agency” is the agency that initiates rulemaking.
- B. **Emergency Rule** – A rule that is promulgated within a shortened timeline and outside the normal procedure set forth in the APA because at least one of four conditions is met:
- Imminent peril to public health, safety, or welfare;
 - Avoidance of sanctions or penalties from the federal government;
 - Avoidance of a budget deficit; and/or
 - Attainment of new or enhanced federal funding.
- C. **Fiscal and Economic Impact Statement (FEIS)**—A statement that must be prepared by the agency for all proposed rules and submitted with the Notice of Intent (NOI) to the Legislative Fiscal Office (LFO) for approval, as required by [R.S. 49:953](#). The FEIS describes the estimated implementation costs (savings) to state or local governmental units, the estimated effect on revenue collections, the estimated costs or economic benefits to directly affected persons or non-governmental groups, and the estimated effect on competition and employment.
- D. **Notice of Intent (NOI)**—A public statement announcing LDH’s intention to adopt, amend, or repeal any rule. The notice of intent is comprised of the following items:
- The text of the proposed rule;
 - A FEIS approved by the legislative fiscal officer and the LDH Assistant Secretary of the Initiating Agency, or designee;
 - The manner for receiving comments;
 - Information about a public hearing;
 - Citations to the authorizing and enabling legislation;
 - A preamble;
 - A family impact statement;
 - A poverty impact statement;
 - Small Business Analysis; and
 - A provider impact statement.

Together, all of these components comprise the NOI that is published in the *Louisiana Register*.

- E. **Rule** – 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. Agency statements not subject to the APA are exemplified by policies governing the internal operations of the agency such as travel regulations, promotional requirements, leave procedures, relocation expenses of employees, and declaratory rulings. A rule is the final stage of rulemaking.

- F. **Rulemaking** – The required process employed by the agency for the adoption and enactment of a rule. Except where the context clearly provides otherwise, the procedures for the adoption of rules and of emergency rules as provided in [R.S. 49:953](#) shall also apply to the adoption of fees by any agency within LDH. Statements of policy and interpretations of statutes resulting from an administrative law tribunal decision of a case or an agency disposition of a particular matter do not constitute rulemaking.
- G. **Potpourri**—Information submitted to the *Louisiana Register* for publication that does not consist of a rule, but is informational only. An example of an item that would be published in the Potpourri section of the *Louisiana Register* is notice of a hearing when substantive changes are made to an NOI that was previously published in the *Louisiana Register*.

IV. ROLES AND RESPONSIBILITIES

A. Role of the Agency Rulemaking Liaison

Each Agency shall designate a Rulemaking Liaison. The Rulemaking Liaison, either solely or with a team (which may include, but not be limited to, other members of the rulemaking/policy unit and/or agency bureau directors/section chiefs) shall:

- Be responsible for all rulemaking needed for his/her agency to lawfully perform its functions.
- Draft his/her agency's own proposed rules, NOI, and required statements according to the procedures set forth in this policy.
- Jointly draft and adopt the needed rule with all concerned offices when rulemaking affects more than one agency within LDH and with stakeholder input, as necessary and/or required.
- Provide a copy of the draft NOI for all interested internal staff to review, receive comments from LDH staff on the proposed draft, and make revisions consistent with comments received, as necessary.
- Schedule a public hearing, if necessary, in accordance with the statutory requirements and within the statutorily mandated timeframe. (see [OSR Timetables](#))
- Receive public comment and notify LDH Rulemaking Coordinator of comments received and of the agency's response.
- Submit the agency-approved NOI and FEIS to the LFO, the LFO and agency-approved NOI and FEIS to OSR, and the agency-approved final rule to OSR.
- Communicate with the LDH Rulemaking Coordinator via email in a timely manner regarding upcoming proposed rules, current rules, submissions to the LFO and the Office of the State Register (OSR), requests for a public hearing, the date and time of

upcoming public hearings, oral and written comments received from the public regarding NOIs, responses to public comments, and post-hearing revisions to the NOI.

- Obtain the signature of the Assistant Secretary/Director, or designee, of the Initiating Agency for the LFO-approved FEIS.
- Obtain approval from the agency leadership and management, the State Health Officer (when applicable), and the Secretary of LDH (through the LDH Rulemaking Coordinator), for all information to be submitted to the OSR for publication.
- Review rules published in the *Louisiana Register* in order to verify their accuracy.
- Maintain the agency's rulemaking website by posting all required reports and notices to the agency rulemaking website/webpage in accordance with the legal requirements.
- Assist the LDH Rulemaking Coordinator and the LDH Bureau of Legal Services in responding to requests for rulemaking records and documents.

B. Role of the LDH Rulemaking Coordinator

The LDH Rulemaking Coordinator shall:

- Monitor all LDH rulemaking activities to ensure compliance with the APA and to identify possible impacts of proposed rules on all LDH agencies.
- Maintain a cumulative file of rulemaking correspondence and historical information on all rules adopted by LDH and provide information to the offices within LDH concerning existing or adopted rules.
- Prepare all legislative oversight required reports required by the APA in connection to NOIs, final rules, and emergency rules and transmit associated correspondence approved and signed by the Secretary, or designee, to the appropriate legislative bodies.
- Communicate via email with the Initiating Agency's Rulemaking Liaison regarding any questions, clarifications, requests for appearances, etc. from LDH leadership or legislative bodies.
- Receive, review, and recommend action for the Secretary, or designee, on the adoption/ amendment/ repeal of any proposed rule initiated by any LDH agency.
- Notify the Initiating Agency's Rulemaking Liaison of the Secretary's approval and transmittal of material for publication, and return signed copies of all rulemaking documents to the Initiating Agency. Any material not approved or in need of revision will be returned to the Initiating Agency.
- Maintain mailing lists of all interested groups and persons and mail copies of NOI and attachments to all persons or groups who have made timely requests of the office for advance notice of its rulemaking activities.
- Issue a monthly report of all LDH rulemaking activities to the LDH Legislative and Governmental Relations section.
- Update the LDH Rulemaking website by posting all required annual departmental reports and notices to the Office of the Secretary website/webpage within the legal requirements.
- Maintain the LDH Rulemaking intranet site (SharePoint).
- In conjunction with the LDH Bureau of Legal Services, respond to all requests for rulemaking records and documents.

C. Role of General Counsel

General Counsel may provide each agency with legal assistance as needed for drafting proposed rules and may advise the LDH Rulemaking Coordinator on rulemaking activities.

D. Legislative and Governmental Relations (LGR) Section

All rulemaking documents (i.e., NOI, final rules, items of potpourri, emergency rules, reports) shall be provided by the LDH Rulemaking Coordinator to the LGR section. The LDH Rulemaking Coordinator shall work with the LGR section to become aware of legislation that requires LDH rulemaking. The LGR section may also provide assistance as needed for drafting reports to the legislature.

V. BOARDS AND COMMISSIONS

All boards and commissions transferred to the jurisdiction of LDH pursuant to [R.S. 36:259](#) shall exercise their rulemaking powers independently of LDH. Active supervision of boards and commissions is conducted by the Occupational Licensing Review Commission created by the Occupational Board Compliance Act ([R.S. 37:41 et seq.](#)), and legislative oversight of the rulemaking functions of the boards and commissions is under the authority of the House and Senate Health and Welfare Committees, as provided for in the APA.

VI. GENERAL INFORMATION ON RULEMAKING

A. Fiscal and Economic Impact Statement (FEIS)

1. Responsibility for preparation of the FEIS lies with the agency proposing the rule for adoption/amendment/repeal.
2. The FEIS must be approved by the Initiating Agency's budget office, Initiating Agency's Assistant Secretary, Director of the Division of Planning and Budget and/or the LDH Deputy Assistant Secretary, and the LDH Undersecretary prior to being submitted to the LFO for approval.

B. Notice of Intent

According to [R.S. 49:953](#), prior to the adoption, amendment, or repeal of any rule, the Initiating Agency shall give notice of its intended action at least 90 days prior to taking action on the rule. The notice shall include text of the proposed rule; a FEIS approved by the Legislative Fiscal Officer and the LDH Assistant Secretary of the Initiating Agency, or designee; the name of the person responsible for responding to inquiries about the intended action; and the time when, the place where, and the manner in which interested persons may present their views on the subject. The notice shall be published at least once in the *Louisiana Register* and shall be submitted to the OSR at least 100 days prior to the date the Department will take action on the rule.

If the NOI does not incorporate the full text of the proposed rule, a complete copy of the full text must be attached and the NOI must reference where copies are available for review. In

cases where a rule is proposed for adoption, amendment, or repeal to comply with federal regulations, the notice must include the citation from the Federal Register by volume, number, date, and page number. In instances where the proposed rule references an outside source, the supporting reference must be bound and submitted to OSR with the NOI. The supporting reference is maintained on file by OSR for public viewing. The deadline for submitting material to the OSR is noon on the 10th day of the month. If the 10th day of the month falls on a weekend or holiday, the deadline is noon on the last business day prior to the weekend or holiday.

The [APA](#) requires that all interested persons be afforded reasonable opportunity to submit data, views, or arguments, orally or in writing. The Initiating Agency shall consider fully all written or oral suggestions or comments received regarding the proposed rule and make any changes it deems necessary. In cases of substantive rules, opportunity for oral presentation or argument (i.e. public hearing) must be granted if requested within 20 days after publication of the Notice of Intent by 25 persons, by a governmental subdivision or agency, by an association having not less than 25 members, or by a committee of either house of the Legislature. Any such public hearing shall be held no earlier than 35 days and no longer than 40 days after the publication of the *Louisiana Register* in which the notice of intended action appears.

If a public hearing is planned, the Initiating Agency should include the date, time, and location of the public hearing in the Notice of Intent.

C. Final Rule

The rule shall become effective upon its publication in the *Louisiana Register*, unless a later date is required by statute or specified in the rule, in which case the later date is the effective date. Reference [OSR timetables](#) for sample dates and deadlines for publication of a final rule.

D. Departmental Approval

All information and documents submitted to LFO and OSR for publication must be reviewed and approved by the Secretary, or designee, prior to submission.

VII. PROCEDURE FOR RULEMAKING

The rulemaking procedure consists of the following major steps:

Step 1: Initiating Phase

- The Initiating Agency (meaning the office/division/bureau/section that initiates the rule) prepares a draft of the proposed new rule or amendment or repeal of an existing rule and fiscal impact documentation.
- When the redline draft version of the NOI is complete, the Initiating Agency's Rulemaking Liaison shall circulate the draft to all agencies' liaison for a minimum of four days. Upon receipt of all comments, or shortly thereafter,

the Initiating Agency's Rulemaking Liaison shall coordinate with the other agencies' Rulemaking Liaison(s) and subject matter experts for the agencies to incorporate comments or reconcile conflicting information (including fiscal impact data), and develop the rule's text.

- It is the responsibility of the Initiating Agency to obtain the approval of the Initiating Agency's respective division/section/bureau director, chief, or manager, the Initiating Agency's budget office, the Initiating Agency's Deputy Assistant Secretary, and the Initiating Agency's Assistant Secretary.
- The Initiating Agency's Rulemaking Liaison will transmit the completed draft of the proposed rule, rulemaking justification form, completed FEIS, fiscal projections, and documentation supporting the fiscal projections to the LDH Rulemaking Coordinator.

Step 2: Executive Approval of the NOI (including the FEIS)

- The LDH Rulemaking Coordinator will review the draft NOI and obtain approval from the Bureau of Legal Services, the Director of the Division of Budget and Planning and/or the LDH Deputy Undersecretary, the LDH Deputy Secretary, and the LDH Secretary, or designee (sequentially).
- If changes must be made, the LDH Rulemaking Coordinator will notify the Initiating Agency's Rulemaking Liaison.
- Once the draft rule is approved, the Initiating Agency's Rulemaking Liaison may proceed with formatting the NOI for publication.

Step 3: Final Approval of the NOI

- The Initiating Agency's Rulemaking Liaison will format the proposed rule according to the OSR guidelines, complete the Insertion Order including obtaining the required signatures, and verify that all components of the NOI are present before submission to LFO and OSR.
- The Initiating Agency's Rulemaking Liaison will submit the final NOI and completed Insertion Order to the Rulemaking Coordinator in order to obtain the Secretary's, or his/her designee's, approval.
- It is the responsibility of the Initiating Agency's Rulemaking Liaison to submit the NOI, signed Insertion Order, and other required documents timely to LFO and OSR. The documents must be submitted electronically and in hard copy to OSR before being transmitted to the legislature.
- The LDH Rulemaking Coordinator will draft and transmit the required legislative oversight reports.
- The Initiating Agency's Rulemaking Liaison shall post all reports to the agency rulemaking website in accordance with the legal requirements.

Step 4: Public Hearing

- All public hearings shall be conducted in compliance with the Louisiana Open Meetings Law ([R.S. 42:11](#) *et seq.*).
- The Initiating Agency is responsible for arranging for the hearing, including, but not limited to: setting the date of the hearing, reserving the meeting room and, preparing the certification, script, sign in sheets, and parking validations, and producing and posting the hearing agenda.

- Within 10 business days of the close of the public comment period, the Initiating Agency’s Rulemaking Liaison, or designee, will upload to the Rulemaking common folder/intranet site:
 - A transcript of all oral comments received;
 - A copy of all written comments received;
 - A copy of all the agency’s approved responses to the comments; and
 - Any revisions to the rule as a result of the comments, if applicable.
- The LDH Rulemaking Coordinator will prepare and transmit the required second legislative oversight reports.
- The Initiating Agency’s Rulemaking Liaison shall post all reports to the agency rulemaking website in accordance with the legal requirements.

Step 5: Final Rule

- The Initiating Agency’s Rulemaking Liaison will submit the proposed final rule and its Insertion Order to the LDH Rulemaking Coordinator.
- The Rulemaking Liaison is responsible for the timely submission of the final rule and other required documents (including proof of submission of oversight reports to the legislative committees) to the OSR for publication of the final rule.
- The Initiating Agency’s Rulemaking Liaison will review NOIs and rules published in the *Louisiana Register* to verify accuracy.

VIII. EMERGENCY RULEMAKING

If an office finds there is imminent peril to the public health, safety, or welfare, a rule may be adopted by emergency procedure (emergency rule), which is outlined in the [APA](#). In addition to imminent peril, an emergency rule may also be adopted when federal regulations require adoption of a rule to avoid a budget deficit or to secure new or enhanced federal funding, in the case of the Medical Assistance Program, or to avoid federal sanctions or penalties.

If an emergency rule is necessary, the Secretary of LDH shall state the reasons for adoption of an emergency rule in writing to the Governor of the State of Louisiana, the Attorney General of Louisiana, OSR, the President of the Senate, the Speaker of the House of Representatives, the chairperson of the Senate Health and Welfare Committee, and the chairperson of the House Health and Welfare Committee. The necessity of emergency shall also be stated in the text of the emergency rule. The notice to the oversight officials listed above must be made within five days following the adoption of the emergency rule. Then the Department may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practical to adopt an emergency rule.

The procedures for initiating emergency rulemaking are as follows:

- A. The Initiating Agency shall prepare a draft emergency rule and an internal memorandum with data that identifies the existence of statutorily defined emergency conditions and justifies the promulgation of an emergency rule to the LDH Rulemaking Coordinator. The draft emergency rule and supporting memorandum shall be approved by the Initiating Agency’s Assistant Secretary/Director, or designee, prior to submission to the LDH Rulemaking Coordinator.

- B. The LDH Rulemaking Coordinator will obtain approval from the LDH Executive Counsel, LDH Legislative & Governmental Relations Liaison, LDH Deputy Secretary, and LDH Secretary, or designee (sequentially).
- C. If the LDH Secretary or designee approves the emergency rule, the actual rule document must be signed and dated by the LDH Secretary, or designee.
- D. After the emergency rule is approved by the LDH Secretary, or designee, the LDH Rulemaking Coordinator shall work with the agency Rulemaking Liaison, or designee, to complete the following documents:
- An Insertion Order form to the OSR with a copy of the Declaration of Emergency attached. Email the Word version of the Emergency Rule and hand deliver hard copy and Insertion Order.
 - A letter to the Governor of the State of Louisiana with a copy of the Declaration of Emergency attached.
 - A letter to Attorney General, State of Louisiana with a copy of the Declaration of Emergency attached.
 - An emailed letter to the President of the Senate with a copy of the Declaration of Emergency attached.
 - An emailed letter to the Speaker of the House of Representatives with a copy of the Declaration of Emergency attached.
- E. The Initiating Agency Rulemaking Liaison will post the emergency rule on the LDH website.
- F. The LDH Rulemaking Coordinator shall mail the Notice of Emergency Rulemaking within five days following adoption of the emergency rule to persons who have made timely requests for notice of rulemaking activities
- G. An emergency rule shall become effective on the date of its adoption, or on a date specified by LDH to be not more than 60 days future from the date of its adoption, provided written notice is given within five days following the date of adoption to the Governor, Attorney General, OSR, the President of the Senate, and the Speaker of the House of Representatives. Emergency rules shall not remain in effect beyond the publication date of the *Louisiana Register* published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in said issue. Any emergency rule so published shall not be effective for a period longer than 120 days. If an emergency rule is to be adopted as a final rule, it must follow all requirements outlined in Part VII of this policy (i.e., publication of a Notice of Intent, etc. within 120 days).
- H. If the same provisions of the emergency rule will be used to promulgate a final rule, the emergency rule must be re-promulgated for an additional period of 120 days in order for the provisions of the emergency rule to remain in effect until the final rule is adopted because the rulemaking process takes longer than 120 days.

IX. ANNUAL REPORT BY DEPARTMENT TO LEGISLATURE

The APA ([R.S. 49:968K](#)) requires LDH to submit an annual report on all rulemaking activities to the House Committee on Health and Welfare and Senate Committee on Health and Welfare. This report must be submitted 30 days prior to the beginning of the regular session of the legislature each year. The LDH Rulemaking Coordinator shall compile this annual report with assistance from the agency

Rulemaking Liaisons. The report shall cover all rulemaking actions taken by all agencies within LDH for the preceding calendar year. The LDH Rulemaking Coordinator will post the annual report to the LDH website.

X. REVISION HISTORY

Date	Revision
January 1, 1978	Policy created
June 15, 1979	Policy revised
September 8, 1980	Policy revised
November 25, 1980	Policy revised
February 1, 1983	Policy revised
September 25, 1983	Policy revised
August 31, 1984	Policy revised
October 1, 1985	Policy revised
June 3, 1986	Policy revised
August 1, 1989	Policy revised
September 15, 1990	Policy revised
August 15, 2000	Policy revised
April 17, 2019	Policy revised