

**SUBJECT
ADMINISTRATIVE
RULEMAKING**

**POLICY NUMBER
11.01**



POLICY MAINTENANCE ADMINISTRATOR: Office of the General Counsel

PURPOSE/SCOPE: To establish policy and procedures for developing and promulgating administrative rules.

I. AUTHORITY

Chapter 20, Florida Statutes, Organizational Structure

Chapter 120, Florida Statutes, Administrative Procedure Act

Chapters 28-101 and 28-102, Florida Administrative Code, Scheduling Meetings and Rulemaking

Chapter 1S-1, Florida Administrative Code, Rulemaking

II. DEFINITIONS

- A. A.P.A. - Administrative Procedure Act (Chapter 120, Florida Statutes).
- B. Authority - Florida Statute which gives the Department the authority to adopt rules on a specific subject.
- C. Division - The division within the Department of Highway Safety and Motor Vehicles assigned the responsibility for the area governed by the rule.
- D. F.A.C. - Florida Administrative Code, the official compilation of the administrative rules. The Department's rule title within the F.A.C. is Title 15.
- E. F.A.W. - Florida Administrative Weekly, the weekly publication which provides notice to the public of proposed rule and regulation changes, as well as public meetings and bid announcements.
- F. History Notes - Citations at the end of each section of the rule which indicate initial effective date and date of each amendment thereafter.
- G. J.A.P.C. - Joint Administrative Procedures Committee, joint standing committee of the Legislature whose primary function is to review agency actions pursuant to the operations of the Administrative Procedure Act.

Executive Director SIGNED ORIGINAL ON FILE	Effective Date 11/15/1984
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- H. Law Implemented - Specific section or subsection of Florida Statutes or Laws of Florida being implemented, interpreted, or made specific.
- I. Notice of Rule Development - The notice required to be published in the Florida Administrative Weekly (F.A.W.) by Section 120.54(2)(a), F.S.
- J. Notice of Proposed Rulemaking - The notice required to be published in the F.A.W. by Section 120.54(3)(a), F.S.
- K. Rule - 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. See Section 120.52(16), F.S., for narrow statutory exceptions. Also used as a prefix to a cited section, subsection, paragraph, or subparagraph of a chapter of the F.A.C.
- L. Division Rule Coordinator - The individual within the division charged by the division director with overseeing adoption of rules for that division.
- M. Agency Rule Coordinator - The attorney within the Office of the General Counsel charged by the General Counsel with overseeing adoption of rules for the Department.
- N. Rulemaking - The agency action for rule adoption, amendment, or repeal.
- O. Rulemaking Handbook ("Handbook") - The handbook for rulemaking under Chapter 120, Florida Statutes, and available on the Department of State website.
- P. Rule Packet - Electronic copies of those documents to be published in the F.A.W. and prepared in the manner and format as set forth in the Rulemaking Handbook.
- Q. OFARR - Office of Fiscal Accountability and Regulatory Reform, created by Executive Order No. 11-01 to review all rules prior to promulgation; review agency practices and contracts; and review any contracts with a value in excess of \$1 million.
- R. Division Attorney Rule Coordinator - The attorney within the Office of the General Counsel charged by the General Counsel with overseeing adoption of rules for the Division.

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III. POLICY

The development, promulgation, amendment and repeal of administrative rules is an ongoing statutory responsibility of the Department of Highway Safety and Motor Vehicles. To assure adequate and enforceable rules consistent with State law and policy, all rules will be developed by the affected division, processed through Department legal and administrative review, scheduled for public review, and filed and promulgated as prescribed by Florida Statutes and the F.A.C.

IV. PROCEDURES (See Administrative Rulemaking Process Chart)

A. Decision to Draft

The Department's responsibility for adopting rules is set forth in Section 120.54(1), F.S. If new legislation requires adoption of rules of the Department, a Notice of Rule Development shall be published in the F.A.W. within 180 days after the effective date of the act. The decision to engage in rulemaking may be made by the Executive Director, the division director of an affected division or the Office of the General Counsel.

B. Responsibility for Preparing Documents

The proposed rule and all other documents required for rulemaking will be prepared by the Division Rule Coordinator.

C. Drafting Steps

1. The steps taken by a Division Rule Coordinator in drafting rules include:
 - a. determination of rulemaking authority;
 - b. determination of law to be implemented;
 - c. identification of problems and determination of needs;
 - d. selection and resolution of policy issues;
 - e. identification of rules needed;
 - f. determination of intent and purpose of rules.
2. While written documentation of the completion of these steps is not required, it may be useful in completing other rulemaking process requirements.

D. The Rule File and Packet

1. The rule packet consists of electronic copies of those documents that must be published in the F.A.W., filed with the Department of State, filed with OFARR or filed with the Joint Administrative Procedures Committee (J.A.P.C.) during the rulemaking process and is part of the rule review file.
2. Rule documents will be prepared in the manner set forth in the most recent edition of the Handbook. The procedures set forth in the Handbook will be followed to adopt forms and materials by reference.

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3. The rule review file will contain the rule packet and all required history notes, legal citations and other appropriate documents and materials, including certification and hearing pages.
- E. Division Attorney Rule Coordinator and Agency Rule Coordinator Review
1. After the rule packet is prepared, the Division Rule Coordinator will post it on the Highway SafetyNet (SharePoint) and notify the Division Attorney Rule Coordinator and Agency Rule Coordinator by email that it has been posted. The Division Attorney Rule Coordinator and Agency Rule Coordinator will review the rule packet and request the Division Rule Coordinator to make any needed changes.
 2. The Division Rule Coordinator may also seek advice on rulemaking from the Division Attorney Rule Coordinator at any stage of the rulemaking process.
- F. Input from Interested Parties
- After review and approval by the Division Attorney Rule Coordinator and Agency Rule Coordinator, the Division Rule Coordinator will prepare another draft of the rule, if necessary, and may review it with persons or groups interested in or affected by the proposed rule.
- G. Review by other Divisions
- If the rule affects the procedures or area of responsibility of other divisions of the Department, the Division Rule Coordinator will notify the affected division director by email that the rule is available for review and comment on the Highway SafetyNet (SharePoint).
- H. Executive Director Review
1. Following approval of the Agency Rule Coordinator, the Division Rule Coordinator will submit the rule packet to the Office of the Executive Director for review and approval.
 2. If the Executive Director approves the rule packet, the Division Rule Coordinator will notify the Agency Rule Coordinator of the approval, and he or she shall proceed with publication of the Notice of Rule Development as set forth in I. ("Publication of the Notice of Rule Development, Workshops, and Costs") below, except in the case of a rule repeal in which case he or she shall proceed to J. ("Approval of the Notice of Proposed Rulemaking"), below.
 3. If the Office of the Executive Director rejects or makes changes in the rule, the Division Rule Coordinator will make the required changes and resubmit the rule through the steps outlined in E. through H.1 and H.2 above until the approval of the Office of the Executive Director is obtained.
- I. Publication of the Notice of Rule Development, Workshops and Costs

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1. The Agency Rule Coordinator will submit the Notice of Rule Development to the F.A.W. and the J.A.P.C., except in the case of repeal of a rule, when no Rule Development is required. The Division Rule Coordinator will be responsible for drafting any supplemental notices or other documents which may be required and for holding the workshop if one is requested in a timely manner by the public or other interested party.
 2. Cost of rule adoption, including, but not limited to, publication of notices, meeting space, and court reporters, will be borne by the division.
- J. Approval of the Notice of Proposed Rulemaking
1. After publication of the Notice of Rule Development, the Division Rule Coordinator will prepare the Notice of Proposed Rulemaking and post it on the Highway SafetyNet (SharePoint) and notify the Division Attorney Rule Coordinator and the Agency Rule Coordinator by email that it has been posted. The Division Attorney Rule Coordinator and the Agency Rule Coordinator will review the Notice and rule text and request the Division Rule Coordinator to make any needed changes.
 2. Following the approval of the Division Attorney Rule Coordinator and the Agency Rule Coordinator, the Division Rule Coordinator will submit the Notice of Proposed Rulemaking to the Office of the Executive Director for review and approval.
 3. If the Executive Director approves the Notice of Proposed Rulemaking, the Division Rule Coordinator will notify the Agency Rule Coordinator of the approval, and the Agency Rule Coordinator will request that the Office of the Executive Director agenda the Notice of Proposed Rulemaking for approval by the Governor and Cabinet.
 4. If the Office of the Executive Director rejects or makes changes in the Notice of Proposed Rulemaking, or rule text, the Division Rule Coordinator will make the required changes and resubmit the rule through steps 1-3 above until the approval of the Office of the Executive Director is obtained.
- K. Publication of the Notice of Proposed Rulemaking
- After approval by the Governor and Cabinet, the Agency Rule Coordinator will submit the Notice of Proposed Rulemaking to the F.A.W. for publication and submit it and any other required documents to the J.A.P.C.
- L. Hearings
- The Division Rule Coordinator will be responsible for holding any required hearings on the rule.
- M. Promulgation by the Governor and Cabinet
- Once a hearing has been held, changes have been made and published, and the time limits required have been met (or if the time limits were met without a

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hearing requested), a Summary of Hearing(s) will be prepared by the Division Rule Coordinator and placed in the rule packet.

1. The Division Rule Coordinator shall prepare the rule packet for transmittal to the Agency Rule Coordinator who will review it for correctness and completeness and request the Office of the Executive Director to place it on the Governor and Cabinet agenda.
2. Generally, this request must be received by the Executive Director's Office no later than Friday of the week preceding the Cabinet Aides meeting. The Agency Rule Coordinator shall confer with the Office of the Executive Director for submittal deadlines for a particular meeting.
3. If a Notice of Continuation of Public Hearing is needed, the Division Rule Coordinator shall submit it to the Agency Rule Coordinator who shall submit it to the F.A.W. and J.A.P.C.
4. The public will also have an opportunity for a hearing before the Governor and Cabinet, sitting as the Head of the Department, pursuant to the Notice of Hearing published in the F.A.W. At the hearing, changes may be made by the Governor and Cabinet. If changes are made, the Division Rule Coordinator shall prepare the Notice of Change and forward it to the Division Attorney Rule Coordinator and the Agency Rule Coordinator who shall review it and submit it for publication in the F.A.W. and to the J.A.P.C.

N. Final Adoption

After adoption and filing of the rules are approved by the Governor and Cabinet, the Division Rule Coordinator will prepare the certification, supporting documents and necessary copies of forms and items adopted by reference and transmit them to the Agency Rule Coordinator who shall arrange for certification by the Executive Director and filing with the Department of State and J.A.P.C. in time to meet the deadline.

O. Notice to Other Divisions and Interested Parties

1. It is the responsibility of the originating division director to advise all divisions of the rule adoption and to provide copies to those individuals outside of the Department who have requested copies.
2. It is the responsibility of the originating division to maintain the identification of affected parties (via a mailing list) for updating of the rule.

P. File Retention

1. The originating division will retain a complete file of copies of all drafts, memoranda, and approval forms relating to the rule, as well as final rule package and certification which was filed with the Governor and Cabinet.
2. This file will be retained as long as the rule is in effect and may be stored electronically in lieu of retention of the original documents.

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Q. Emergency Rules

1. Emergency rules, effective for a maximum of ninety days, are not renewable and may only be promulgated when the Department finds immediate danger to public health, safety, or welfare.
 - a. To promulgate an emergency rule, a true emergency must exist.
 - b. Avoidable administrative failure or lack of administrative foresight does not constitute an emergency and will disqualify related facts and circumstances from serving as the basis for promulgating an emergency rule.
 - c. All decisions for emergency rules will be made only by the Executive Director.
2. The division will prepare the documents and follow the procedures set forth in the Handbook in adopting emergency rules. Internal procedures for emergency rules are the same as set out above for ordinary rules.