

# Administrative law

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The Rule making outlined in section 120. 54 of the Florida Administrative Procedures Act refers to mutually acceptable proposed rule known as Negotiated Rule Making. Under section 120. 54, an agency has option to use negotiated rulemaking in developing and adopting rules particularly when drafting complex rules or when anticipating strong opposition to the rules.

Section 120. 54 also allows the assembling “ of interested persons” who will in good faith, negotiate whether the work of the committee can use the consensus of the group as the basis for the proposed laws.

Chapter 120 of Florida Statute, the Administrative Procedure Act governs the Agency rulemaking process. The rule making under chapter 120, Florida Statutes is a multi-step procedures that consist of: Drafting the rule or rule amendment as well as the approval of the rule or rule amendment by the proper agency official.

Its function also includes “ publishing a notice of Proposed Rule Development in the Florida Administrative Weekly”, the publication of a notice of proposed Rule making in the F. A. W., and providing an occasion for public participations through a notice, by a 21-day public comment period and by hearing public if the affected party requested or at the judgment of the originating agency.

Rule making agency may require hearings before the Division of Administrative Hearing if a formal petition is filed by a considerably affected persons challenging the rule, and make changes in the rule if necessary following the notice of proposed Rulemaking.

Compare and contrast my choice to the Federal APA rule making process and explain critical differences

The APA uses the term rule rather than “ regulation.” In the context of the federal APA “ the issuance of a regulation is called “ rulemaking” (GAO p. 3-3). The APA defined rulemaking as “ agency process for formulating, amending, or repealing a rule” GAO p. 3-16).

Thus, in a sense, rule making both in the context of sections 120. 54 and 120. 541 of the Florida Administrative Act and the Federal APA have similar function. Both require the same processes and the same function except that in the context of the Federal APA where there are two types of rule making, the formal and the informal rule making.

The formal rule making involves trial-type hearing, but this type is required only “ where the governing statute requires that the proceeding be on the record” (GAO p. 3-3). The informal rule making however, is where most of the agency regulations come. The informal rule making however published the proposed regulations in the federal register.

In contrast to the Federal APA however, the rule making process under Florida Administrative procedure Act do not exempt state agencies from rule making. The Federal APA employed various rule making exceptions, such as: rule making does not apply to military or foreign affairs function of the United States or a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, and so forth.

In Florida rule making an administrative agency is required to engage in rule making if it is feasible and practicable to do so. This means that in Florida

rule making process, there are no exemptions and state agencies can be compelled to engage in rule making.

From the point of view of state agencies, my choice is worse than the federal rule making processes because definitely, state agencies are not in favor of the Florida rule making processes for the simple reason that their privileges or exceptions under federal APA rule making are immaterial under Florida rule making. They can be compelled to engage in rule making which means that they have to work.

## Part 2 The Joint Administrative Procedures Committee

Is the Joint Administrative Procedures Committee (JAPC) a meaningful way for the state legislature to exercise some degree of control over the rulemaking process?

I should say yes because the function of this committee is to review rules made pursuant to the Administrative Procedure Act. The committee evaluates all proposed rules as well as the existing rules and even determines their statutory authority to ensure that the legislative function of these rules will not be usurped by any branch of government.

According to Stacey M. Tharp of the Administrative Law Advisory Committee, the JAPC “ reviews all proposed and existing laws” and it has power to recommend to congress to pass a bill, to suspend or even to repeal a rule. Though the committee does not have power on its own but it certainly exercise monitoring and control of the existing rules through their evaluation of such rules.

The JAPC therefore is a meaningful way for the state legislature to exercise degree of control over rule making process in order for any administrative or the executive branch not to usurp or abuse the rule making process. The JAPC in effect, serves as quality control for the legislature through which all rules are insured to be firmly grounded on statutory authority (Tharp)

How does role assigned to the JAPC differ from the role assigned the committee in sections 3-203 and 3-204 of the Revised Model State Administrative Procedure Act? Does this make the committee in sections 3-203 and 3-204 potentially more or less effective than JAPC?

There seemed to be an obvious difference between the roles assigned to the JAPC and the role assigned to the committee of the Revised Model State Administrative Procedure Act. The JAPC serves as the monitoring and evaluating arm of the legislature to ensure that the executive branch does not usurp the rules by means of reviewing and recommending either to pass, to suspend or to repeal questionable rules.

While the Revised State Administrative Procedure Act is the one governing JAPC and all other agency rule making processes. The Revised State Administrative Procedures Act is the model by which the statutory authority of JAPC and that of other states' agency rule making processes are modeled.

Does this make the committee in sections 3-203 and 3-204 potentially more or less effective than JAPC

I don't think so. When congress enacted the APA in 1946, they have envisioned its noble function. When it was outmoded because of the changes

society has gone, still the functions of this Act remain effective though it need to be updated.

Thus, the 1961 revised State Procedure Act still contains much of the 1946 Act, and even the 1981 revision; otherwise this act could have abolished already. According to Hearing Officer's Manual, legislature found and declared that there was lack of uniformity in the administrative rule making, adjudicatory and licensing processes among government agencies which create public misunderstanding.

It is for this reason that the APA was created. Although each state may have adopted their procedure act of rule making, yet on the national scale, the Revised Administrative procedure Act still provides uniformity for this entire rule making agencies.

#### Reference

Appendix E: State Administrative Procedure Act. Hearing Officer's Manual. <http://www.cs.state.ny.us/pio/hearingofficermanual/chapter-app-E-sapa.htm>

Chapter 120: Administrative Procedure Act. [http://www.doh.state.fl.us/ig/ADR/Florida\\_Laws/Statutes/FS120-54\\_Negotiated\\_Rulemaking.pdf](http://www.doh.state.fl.us/ig/ADR/Florida_Laws/Statutes/FS120-54_Negotiated_Rulemaking.pdf)

Tharp, S. M. "Legislative Powers of Rules Review in the States and Congressional Powers of Rules Review" <http://legis.state.va.us/codecomm/alac/Archives/2001/legrev1.pdf>

United States General Accounting Office (July 1991). Principles of Federal Appropriations Law 2nd edition (volume I). USA: Diane Publishing.

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