

# **DEPARTMENT OF JUSTICE**

## **OCCUPATIONAL LICENSING REVIEW PROGRAM**

Louisiana Revised Statute 49:260 creates a Department of Justice Occupational Licensing Review Program which grants the Department of Justice (“LADOJ”) the authority to enter into an agreement with occupational licensing boards to provide active state supervision. The LADOJ will review the substance of each proposed occupational regulation or disciplinary action submitted to ensure compliance with clearly articulated state policy.

### **I. Proposed Occupational Regulations**

An occupational regulation is a rule issued by an occupational licensing board that has reasonably foreseeable anticompetitive effect(s). Examples of rules that have reasonably foreseeable anticompetitive effects include rules that: (i) create a barrier to market participation, (ii) result in higher prices, (iii) fix a price or rate of a product or service, (iv) limit price competition, (v) reduce competition or exclude present or potential competitors from the occupation regulated by the board, (vi) limit output or supply of a good or service provided by the members of the regulated occupation, (vii) reduce the number of providers that can serve a particular set of customers. The Louisiana Administrative Procedure Act defines “Rule” in La. R.S. 49:951(8) as:

[E]ach 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.

### **A. Submission of Occupational Regulations**

Proposed occupational regulations should be submitted to the prior to submission of the Second Report to the Legislative Oversight Committee. The submission to the LADOJ must include the following:

- Notice of intent;
- Approved fiscal and economic impact statement;
- Proposed occupational regulation, including an underline/strikethrough version;
- Report of public comments as described in La. R.S. 49:961(B)(1);
- Agency response to public comments as set forth in La. R.S. 49:961(B)(3);
- Point of contact information including name, email, and phone number; and
- Completed OLRP Rule Submission Form.

An occupational board may submit a separate Rule Submission Form for each proposed rule or may submit a single Rule Submission Form for multiple *related* proposed rules. All or some of these documents may be made available to the public on the LADOJ's website while the proposed rule is under review.

An occupational licensing board may request expedited review of a proposed rule. If the LADOJ grants the request for expedited review, the LADOJ may provide for a shorter public comment period on the proposed rule of no less than seven calendar days.

The occupational licensing board may submit additional documents that it deems relevant to the LADOJ's review. Documents submitted to the LADOJ may be subject to disclosure under the Louisiana Public Records Act.

This information may be submitted via email to: [olrp@ag.louisiana.gov](mailto:olrp@ag.louisiana.gov) or via hand delivery, U.S. Mail, or express courier to:

Louisiana Department of Justice  
Attn: Public Protection Division- Occupational Licensing Review Program  
1885 N. 3<sup>rd</sup> St.  
Baton Rouge, LA 70802

Or

Louisiana Department of Justice  
Attn: Public Protection Division- Occupational Licensing Review Program  
P.O. Box 94005  
Baton Rouge, LA 70804

## **B. Review of Occupational Regulations**

The LADOJ will provide written confirmation of receipt of the occupational licensing board's submission. The confirmation will inform the occupational licensing board of the period during which the LADOJ will accept public comments on the proposed rule, and grant or deny any request for expedited review. The LADOJ will also assign a review number to each submission.

The LADOJ will review the substantive merits of the proposed occupational regulation and assess whether the recommended action comports with the clearly articulated and affirmatively expressed policy established by the state legislature. During the review, the LADOJ may request and obtain additional information necessary for a proper evaluation of the proposed rule.

The LADOJ will ascertain relevant facts, collect data, conduct public hearings, invite and receive public comment, investigate market conditions, conduct studies, and review documentary evidence as necessary. The information-gathering obligation of the LADOJ will depend in part upon the scope of inquiry previously conducted by the occupational licensing board. For example, if the occupational licensing board has collected the relevant information and data and it included it in its submission to the LADOJ, it may be unnecessary for the LADOJ to repeat these tasks. Instead, the LADOJ may utilize the materials assembled by the occupational licensing board when conducting its review.

The LADOJ will issue a written decision approving, modifying, or disapproving of the proposed occupational regulation with an explanation for the basis of the decision.

## **II. Proposed Disciplinary Actions**

After the occupational licensing board issues findings of facts and conclusions of law, but prior to taking anti-competitive disciplinary action, the occupational licensing board shall submit the proposed action to the LADOJ in order to obtain active state supervision. The Order should contain language that the Board action is entered pending review by the LADOJ. For example, *“This Order is entered pending review and written approval by the Louisiana Department of Justice. If approved, the date of the final Order shall be the date the Louisiana Department of Justice issues written approval of the Order.”*

If the proposed action is a cease and desist letter, the occupational licensing board may submit the proposed cease and desist letter in lieu of a proposed order.

The occupational licensing board may submit to the LADOJ any disciplinary action it determines has *potential* anti-competitive effects, in order to obtain active supervision. However, the following types of disciplinary actions should not be submitted to the LADOJ for review: (i) actions that are ministerial,<sup>1</sup> such as actions resulting from the respondent’s failure to renew their license as required by state statute; (ii) consent agreements; (iii) actions resulting from a criminal conviction in a court of competent jurisdiction; (iv) actions that do not affect the status of a license or otherwise prevent the licensee from continuing to participate in the occupation. i.e. fine, imposition of education requirements, letter or reprimand; (v) actions where the board is filing suit in a court of competent jurisdiction to enforce a state statute.

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<sup>1</sup> “The ministerial (non-discretionary) acts of a regulatory board engaged in good faith implementation of an anticompetitive statutory regime to not give rise to antitrust liability.” FTC Staff Guidance on Active State Supervision of State Regulatory Boards Controlled by Market Participants, 2015.

## **A. Submission Disciplinary Actions**

Submissions of Disciplinary Actions must contain the following:

- Proposed findings of fact and conclusions of law or the proposed cease and desist letter;
- Evidentiary record of the proceeding. All confidential records shall be identified as confidential and will be returned to the Occupational Licensing Board after the review.

The occupational licensing board may submit additional documents that it deems relevant for the LADOJ's review. Documents submitted to the LADOJ may be subject to disclosure under the Louisiana Public Records Act.<sup>2</sup>

This information may be submitted via hand delivery, U.S. Mail, or express courier to:

Louisiana Department of Justice  
Attn: Public Protection Division- Occupational Licensing Review Program  
1885 N. 3<sup>rd</sup> St.  
Baton Rouge, LA 70802

Or

Louisiana Department of Justice  
Attn: Public Protection Division- Occupational Licensing Review Program  
P.O. Box 94005  
Baton Rouge, LA 70804

Submissions of Disciplinary Actions should not be sent via email.

## **B. Review of Disciplinary Actions**

The LADOJ will provide written confirmation of the receipt of the disciplinary action. The LADOJ will also assign a review number to each submission.

During the review, the LADOJ may request and obtain additional information necessary for a proper evaluation of the proposed action. The information-gathering obligation of the LADOJ will depend in part upon the scope of inquiry previously conducted by the occupational licensing board. For example, if the occupational licensing board has

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<sup>2</sup> La. R.S. 49:260 (E)(5) provides "All records, writings, accounts, letters, data, pictures, drawings, charts, reports, or photographs shall be considered to be in the custody and control of the occupational licensing board, and all exemptions contained in La. R.S. 44:1, *et seq.*, or any other provision of the law shall continue to apply."

collected the relevant information and data and it included it in its submission to the LADOJ, it may be unnecessary for the LADOJ to repeat these tasks. Instead, the LADOJ may utilize the materials assembled by the occupational licensing board when conducting its review.

The LADOJ will issue a written decision approving, modifying, or disapproving of the proposed disciplinary action with an explanation for the basis of the decision.