

(b) An administrative correction may be made to correct an error which is obvious, easily recognizable, or apparent to the promulgating agency and the regulated public. An administrative correction may be made to conform a proposed or adopted rule to the intent of the agency as expressed in the proposal or adoption statements. Administrative corrections may be made to correct any part of a rule including, but not limited to, its text, spelling, grammar, punctuation, codification, and cross-references.

(c) An administrative change may be made to recodify a rule. Administrative changes may also be made to amend a rule to provide the public with notice of nonregulatory changes that have occurred since the rule was adopted. Administrative changes may include, but are not limited to, changes in:

1. Names of departments, agencies, divisions and bureaus;
2. Titles of specific individuals; and
3. Addresses, phone numbers and business hours.

(d) An administrative correction or change shall not be used to adjust the text of a rule to subsequent changes in circumstance or policy decisions.

(e) Notice of administrative correction or change shall be published in the New Jersey Register. The administrative correction or change with appropriate annotation shall be included in a subsequent supplement to the New Jersey Administrative Code.

Repeal and New Rule, R.1991 d.85, effective February 19, 1991.  
See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Section was "Administrative correction".  
Amended by R.1996 d.79, effective February 20, 1996.  
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

### 1:30-2.8 Appendices

(a) Appendices shall include only material which clarifies, illustrates or explains a rule. An appendix may include, but is not limited to, the following:

1. Technical requirements or specifications;
2. Instructions;
3. Formulae;
4. Forms;
5. Examples of hypothetical cases;
6. Reprints of regulations, statutes, forms, etc., which originate elsewhere;
7. Lists of offices, their addresses and hours of business; and
8. Analyses or explanatory material regarding a rule, which may contain a rationale or derivation of the rule.

(b) Any material, such as but not limited to, that in (a)1 through 8 above which is non-regulatory may be included in an appendix and cross-referenced in the text of a rule.

(c) Any material, such as, but not limited to, that listed in (a)1 through 8 above which is regulatory may be included in an appendix as long as the appendix is incorporated by reference in the text of a rule. Any amendment to the appendix shall therefore be through rulemaking.

(d) The Office of Administrative Law shall, pursuant to N.J.S.A. 52:14F-5 and N.J.S.A. 52:14B-7(c) and (f), determine:

1. Whether any regulatory provisions found in an Appendix shall be integrated and/or codified into the text of a rule; and
2. The location of an Appendix to a rule in the New Jersey Register and the New Jersey Administrative Code; and
3. Whether an Appendix should be published in the New Jersey Register and the New Jersey Administrative Code.

(e) This section shall be applied prospectively; however, if existing appendices or rules to which they refer are subsequently amended after August 15, 1988, those appendices and rules shall then be conformed to comply with this section.

New Rule, R.1988 d.383, effective August 15, 1988.  
See: 19 N.J.R. 675(a), 20 N.J.R. 1021(a), 20 N.J.R. 2052(a).

## SUBCHAPTER 3. PROPOSAL PROCEDURE

### 1:30-3.1 Notice of proposed rule

(a) Where the law requires that an agency give notice of its rulemaking proceedings, the agency shall prepare a "notice of proposed rule" and submit the notice to the OAL. The notice of proposed rule shall comply with the requirements of this section.

(b) The notice of proposed rule shall include a suggested N.J.A.C. citation for any proposed new rule and shall include the existing citation for any amendment, repeal or readoption.

(c) The notice of proposed rule shall include the name of the adopting agency head and agency and the signature of the adopting agency head or other authorized signatory as provided in N.J.A.C. 1:30-2.4.

(d) The notice of proposed rule shall include a citation to the specific N.J.S.A. statutory authority for the proposed rule or the Public Law number if an N.J.S.A. citation is unavailable. An agency may not cite its general statutory

authority unless specific legal authority is unavailable and the agency is relying on its general or residual powers, in which case a statement to that effect shall be made in the summary.

(e) The notice of proposed rule shall include an announcement of the public's opportunity to be heard regarding the proposed rule, which shall include:

1. When, where, and how persons may present their views orally or in writing;
2. When and where persons may attend any formal rule adoption proceeding;
3. The name, address and telephone number of the person(s) to receive written or oral comments; and
4. If the agency chooses to accept comments electronically, a facsimile telephone number (FAX number) and/or e-mail address.

(f) The notice of proposed rule shall include a brief statement of the proposed rule, which shall include:

1. A summary statement of the proposed rulemaking with a clear and concise explanation of its purpose and effect. The summary shall describe, detail and identify:
  - i. Who and what will be affected by the proposal;
  - ii. How, when and where the effect will occur;
  - iii. What the proposal prescribes, proscribes or otherwise mandates;
  - iv. What enforcement mechanisms and sanctions may be involved; and
  - v. Any other relevant or pertinent information.
2. A social impact statement which describes the expected social impact of the proposed rulemaking on the public, particularly on any segments of the public proposed to be regulated, and including any proposed or expected differential impact on different segments of the public, including the rulemaking action, and justification therefor.
3. An economic impact statement which describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, and particularly any segments of the public proposed to be regulated.
4. A regulatory flexibility analysis or statement.
  - i. All rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include a regulatory flexibility analysis which describes the methods utilized to minimize any adverse economic impact on small businesses.
  - ii. "Small business" means any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and which employs fewer than 100 full time employees.

iii. Rules which do not impose reporting, recordkeeping or other compliance requirements on small businesses shall be accompanied by a regulatory flexibility statement which indicates that no such requirements are imposed, and the basis for that finding.

iv. Rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include in the regulatory flexibility analysis with as much quantification as is practical or reliable, the following:

- (1) A description of the types and an estimate of the number of small businesses to which the rule will apply.
- (2) A description of the reporting, recordkeeping and other compliance requirements, and the kinds of professional services likely to be needed to comply with the requirements.
- (3) An estimate of the initial capital costs, and an estimate of the annual compliance costs, with an indication of any likely variation on small businesses of differing types and sizes.
- (4) An indication of how the rule is designed to minimize any adverse economic impact on small businesses.

v. To indicate how the rule is designed to minimize any adverse economic impact on small businesses, the following approaches shall be considered in the regulatory flexibility analysis:

- (1) The establishment of differing compliance or reporting requirements or timetables that take into account resources available to small businesses;
- (2) The use of performance rather than design standards; and/or
- (3) An exemption from coverage by all or part of the rule, provided that the public health, safety or general welfare is not endangered. A finding of endangerment shall explain the relationship between the regulatory requirement that cannot be exempted and the public health, safety or general welfare.

vi. The regulatory flexibility analysis in (f)4iv and v above shall be required whenever small businesses comprise part of, or the entire regulated group on which reporting, recordkeeping or other compliance requirements are imposed.

5. A Federal Standards Statement or Analysis which addresses whether the rules in the notice of proposal contain standards or requirements that exceed standards or requirements imposed by Federal law. The analysis shall apply to any new, readopted or amended rule under the authority of or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

i. Rules which are not subject to any Federal standards or requirements shall be accompanied by a statement to that effect and that a Federal Standards Analysis is not applicable to the rulemaking.

ii. Rules which contain standards or requirements that do not exceed or are the same as Federal standards or requirements shall be accompanied by a statement which cites the Federal standards or requirements and states that the standards or requirements of the rule do not exceed or are the same as those imposed by Federal law.

iii. Rules which exceed standards or requirements imposed by Federal law, notwithstanding the Federal government's determination that lesser standards or requirements are appropriate, shall be accompanied by an analysis which contains the following:

(1) A discussion of the agency's policy reasons for imposing standards or requirements which exceed those required by Federal law;

(2) A cost-benefit analysis that supports the agency's decision to impose standards or requirements which exceed those required by Federal law;

(3) A discussion which supports the fact that the agency standard or requirement to be imposed is achievable under current technology; and

(4) A certification by the agency head that the analysis permits the public to understand accurately and plainly the purposes and expected consequences of the new, readopted or amended rule.

6. A jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect.

(g) The notice of proposed rule shall include the full text of the proposed new rule, amendment, repeal or readoption, specifically indicating additions and/or deletions of any rule being repealed or renumbered.

(h) Upon OAL's receipt of the proposal notice which conforms to these requirements:

1. The OAL shall submit the notice, other than a notice of a Federally required rule (see N.J.A.C. 1:30-3.7), to the Senate and the General Assembly;

2. The OAL shall publish the notice of proposed rule in the next available issue of the New Jersey Register. Pursuant to N.J.S.A. 52:14B-7(c), any proposal notice which would be cumbersome, or unduly expensive to publish, shall not be printed in full. Instead, such proposals shall be summarized in the Register. The proposing agency shall make available the proposed rule and provide in the notice the manner in which, and from where, copies may be obtained.

3. The agency shall mail either the notice of proposed rule, as filed, or a statement of the substance of the proposed action to those persons who have made timely request of the agency for notice of its rulemaking actions; and

4. The agency shall undertake an additional method of publicity other than publication in the Register, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule:

i. The additional method of publicity shall include information on the time, place, and manner in which interested persons may present comments and either of the following:

(1) The full text of the proposed rule; or

(2) A statement of the substance of the proposed action; or

(3) A description of the subject and issues involved.

ii. The additional method of publicity may be by:

(1) Notice in a newspaper of general circulation;

(2) Trade, industry, government or professional publications;

(3) Distribution of a press release to the news media;

(4) Posting of a notice in an appropriate location(s);

(5) Mailing to a distribution list; or

(6) Any other manner reasonably calculated to inform those persons most likely to be affected by or interested in the intended action.

iii. The additional method of publicity shall be provided at least 30 days prior to the close of the public comment period.

(i) Any proposal notice which does not meet the requirements in (c) through (g), (h)3 or (h)4 above may be subject to the provisions of N.J.A.C. 1:30-1.12.

Amended by R.1987 d.345, effective August 17, 1987.  
See: 19 N.J.R. 675(b), 19 N.J.R. 1543(a).

Added (a)5iv "A regulatory flexibility statement in accordance with N.J.S.A. 52:14B-16 et seq." Repealed (b); recodified (c) to (b) with additional text added to (b)4. Added new (c).

Amended by R.1989 d.20, effective January 17, 1989.  
See: 20 N.J.R. 573(a), 21 N.J.R. 152(a).

Substantially amended.

Amended by R.1991 d.85, effective February 19, 1991.  
See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

In (b), clarified citation requirements. Added (e)3.  
Amended by R.1996 d.79, effective February 20, 1996.

See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

Amended by R.1996 d.120, effective April 1, 1996.

See: 27 N.J.R. 414(a), 28 N.J.R. 1823(a).

Added (f)5.

Amended by R.1996 d.575, effective December 16, 1996.

See: 28 N.J.R. 3695(a), 28 N.J.R. 5173(a).  
Added (e)4.

#### Case Notes

Proper notice of proposed regulations were given to public under former rulemaking regulations. *Bergen Pines Cty. Hospital v. New Jersey Dept. of Human Services*, 96 N.J. 456, 476 A.2d 784 (1984).

Validity of rule upheld against challenge based on violation of one year adoption requirement under former rulemaking regulation. *Insurance Brokers Assn. of New Jersey v. Sheeran*, 162 N.J.Super. 34, 392 A.2d 203 (App.Div.1978), certification denied 78 N.J. 408, 396 A.2d 594 (1978).

Compliance with notice requirements of former rulemaking regulation noted (cited as N.J.A.C. 15:5-3.5). *New Jersey Builders, Owners and Managers Assn. v. Blair*, 60 N.J. 330, 288 A.2d 855 (1972).

#### 1:30-3.2 Informal public input; notice of pre-proposal for a rule

(a) Where, prior to the initiation of a formal rulemaking proceeding, an agency seeks assistance in formulating a rule or wishes comments on a preliminary rule draft, it may solicit public input regarding the rulemaking. An agency may use any reasonable informal procedures and means of notice to solicit participation from the regulated or interested public.

(b) Where, pursuant to N.J.S.A. 52:14B-4(e), an agency determines to conduct a deliberative proceeding with respect to a contemplated rulemaking, the agency shall submit a "notice of pre-proposal for a rule" to the OAL for publication in the New Jersey Register at least 30 days prior to submission of any formal notice of proposed rule on the same subject.

(c) The notice of pre-proposal for a rule shall include:

1. The name of the adopting officer and agency;
2. The subject matter, problem and purpose which the agency contemplates addressing; and, when available, draft text of the contemplated rule;
3. A citation of the legal authority authorizing the contemplated action;
4. An announcement of the public's opportunity to be heard regarding the contemplated action, which shall include:
  - i. Where, when and how persons may present their comments orally or in writing (see N.J.A.C. 1:30-3.3 Opportunity to be heard); and
  - ii. When and where persons may attend an informal conference or consultation.
5. The title and nature of any committee, and where appropriate, the names and affiliations of any committee members, appointed to advise the agency with respect to any contemplated rulemaking.

(d) It is recommended that all rulemakings which involve the joint or concurrent promulgation of two or more agencies ("joint proposal and adoption") utilize a pre-proposal.

Amended by R.1991 d.85, effective February 19, 1991.

See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Added new (a), regarding informal public input; redesignated existing (a) through (c) as (b) through (d).

#### 1:30-3.3 Opportunity to be heard

(a) As part of any proceeding for a pre-proposal under N.J.A.C. 1:30-3.2(b) and (c), or for a proposed rule under N.J.A.C. 1:30-3.1, the agency shall accept written or oral comments, arguments, data and views for at least 30 days following publication in the Register of the notice of pre-proposal or proposed rule.

(b) Where an agency permits any other method of public comment on a pre-proposal or a proposed rule, the agency shall provide timely notice of that opportunity in a manner reasonably calculated to reach the interested public.

(c) When a public hearing on a pre-proposal or on a proposed rule is scheduled for a time after the 30-day public comment period, the comment period shall be extended in the public hearing notice until the close of the public hearing proceedings. The hearing officer may recommend to the agency head that the comment period be further extended to foster receipt of comments by persons attending the public hearing.

(d) To provide a full comment period, the agency shall accept all public comments postmarked within the designated comment period set forth in the notice of pre-proposal or proposed rule, or as thereafter extended.

(e) The agency shall consider fully all written and oral submissions concerning the pre-proposal or proposed rule.

Amended by R.1991 d.85, effective February 19, 1991.

See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

In (a), added "or oral comments, arguments, data and views". Deleted existing (b) through (d), redesignated (e) as (b), and added new (c) and (d).

Amended by R.1996 d.575, effective December 16, 1996.

See: 28 N.J.R. 3695(a), 28 N.J.R. 5173(a).

Added (d); recodified existing (d) to (e).

#### Case Notes

Secret rules adopted without compliance with rule making requirements of Administrative Procedure Act denied due process. *State v. Klemmer*, 237 N.J.Super. 32, 566 A.2d 836 (L.1989).

#### 1:30-3.3A Public hearings

(a) A Legislative Committee, a State agency, or a county, local or municipal governmental entity may request that an agency conduct a public hearing on a proposed rulemaking. The party requesting the public hearing shall submit the request to the agency within 15 days following publication of the proposed rule in the Register. The party requesting the public hearing shall also submit a copy of the request to the Office of Administrative Law.

(b) If a public hearing is to be held as part of a proceeding for a pre-proposal or a proposed rule, the agency shall provide at least 15 days notice of the public hearing.

1. When a public hearing is scheduled as part of a proceeding for a pre-proposal or a proposed rule, notice of the public hearing shall be contained in the notice of pre-proposal or proposed rule published in the New Jersey Register.

2. When a public hearing is scheduled after the notice of pre-proposal or proposed rule has been published, notice of the public hearing shall be published in the New Jersey Register, if such publication provides 15 days notice of the hearing. If timely Register publication is not feasible, notice of the public hearing may be published in the Register with less than 15 days notice as long as 15 days notice of the public hearing is given in another manner reasonably calculated to reach the interested public. A copy of such notice shall be filed with OAL.

(c) Any public hearing held pursuant to this section shall be conducted according to the procedures outlined in N.J.S.A. 52:14B-4(g).

(d) In addition to any other publication of results, the recommendations of the hearing officer, and the agency's response either accepting or rejecting the recommendations, shall be summarized and published in the New Jersey Register as set out in (d)1 through 4 below. The notice shall also state where a copy of the public hearing record may be reviewed or obtained.

1. When no proposed rulemaking results from the public hearing, the summary shall be published as a public notice.

2. When a proposed rulemaking results from the public hearing, the summary shall be published as part of the proposal notice.

3. When a public hearing is held as part of a proposed rulemaking and the proposed rule is adopted, the summary shall be published in the notice of adoption.

4. When a public hearing is held as part of a proposed rulemaking but the proposed rule is withdrawn or not adopted, the summary shall be published as a notice of agency action.