

CHAPTER 30

RULES FOR AGENCY RULEMAKING

Authority

N.J.S.A. 52:14B-4 and 7, and 52:14F-5(f), (h) and (i).

Source and Effective Date

R.1996 d.79, effective January 16, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

Executive Order No. 66(1978) Expiration Date

Chapter 30, Rules for Agency Rulemaking, expires on January 16, 2001.

Chapter Historical Note

Chapter 30, Rules for Agency Rulemaking, was originally codified at N.J.A.C. 15:15, as Rules of Administrative Procedure. With the enactment of P.L. 1981 c.27 on February 9, 1981, effective March 11, 1981, which made significant changes to the Administrative Procedure Act (APA), N.J.A.C. 15:15 was substantially amended and recodified as N.J.A.C. 1:30, Rules For Agency Rulemaking. The new N.J.A.C. 1:30 was filed as an emergency rule pursuant to the APA prior to the enactment of P.L. 1981 c.27. Under the prior version of the APA, an emergency rule was effective upon filing and was not required to be adopted. N.J.A.C. 1:30 was therefore filed and effective as an emergency adoption on March 6, 1981 operative March 11, 1981 as R.1981 d.83. See: 13 N.J.R. 171(a), 13 N.J.R. 255(d).

The amendments to Chapter 30 were designed to: (1) adjust the rules to implement the new rulemaking provisions of the APA; (2) adjust the rules to correspond with the establishment of the OAL and to related changes in the enforcement of the APA; (3) crystallize with greater clarity and precision some of the notice and hearing requirements of the APA; and (4) consolidate various provisions and repeal certain rules which repeated statutory language.

After one year of operation under P.L. 1981 c.27, Chapter 30 was substantially amended to address several comments and criticisms while operating under the new statutory requirements by R.1982 d.466, effective January 3, 1983. See: 14 N.J.R. 780(a), 15 N.J.R. 29(a), 15 N.J.R. 543(a). The amendments included language and technical changes; new definitions; clarified the effective date of an adopted rule; outlined compliance procedures for Executive Order No. 66(1978); specified the types of changes which could be made to a proposed rule upon adoption; changed rulemaking retention records from two to three years; provided for administrative correction of rules; and required that proposed and adopted rules be signed by a duly authorized person.

Chapter 30 was readopted pursuant to Executive Order No. 66(1978) effective February 14, 1986 with amendments effective March 3, 1986 as R.1986 d.60. See: 18 N.J.R. 3(a), 18 N.J.R. 469(a), 18 N.J.R. 938(a). Pursuant to Executive Order No. 66(1978), Chapter 30 was readopted as R.1991 d.85, effective January 25, 1991. See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a). Pursuant to Executive Order No. 66(1978), Chapter 30 was readopted as R.1996 d.79, effective January 16, 1996. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Overturning Environmental Regulations: A Primer on Breaching the Regulatory Walls. John A. McKinney, Jr., J. Wylie Donald, 160 N.J.Law. 48 (Mag.) (April 1994).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 1:30-1.1 Short title
- 1:30-1.2 Definitions
- 1:30-1.3 Offices
- 1:30-1.4 Citations to the Code
- 1:30-1.5 Citations to the Register
- 1:30-1.6 Statutory citations in the Code
- 1:30-1.7 Use of headings
- 1:30-1.8 Access to documents
- 1:30-1.9 Copies of documents; fees
- 1:30-1.10 Forms
- 1:30-1.11 (Reserved)
- 1:30-1.12 Compliance
- 1:30-1.13 Invalidation of rule
- 1:30-1.14 Publication filing deadlines
- 1:30-1.15 Filing of a document

SUBCHAPTER 2. RULEMAKING GENERALLY

- 1:30-2.1 Clarity of rules
- 1:30-2.2 Incorporation by reference
- 1:30-2.3 Single subject for each section
- 1:30-2.4 Authorization for rule activity
- 1:30-2.5 Effect of statement for proposed rule
- 1:30-2.6 Official copy of proposed, adopted and promulgated rule
- 1:30-2.7 Administrative corrections and changes
- 1:30-2.8 Appendices

SUBCHAPTER 3. PROPOSAL PROCEDURE

- 1:30-3.1 Notice of proposed rule
- 1:30-3.2 Informal public input; notice of pre-proposal for a rule
- 1:30-3.3 Opportunity to be heard
- 1:30-3.3A Public hearings
- 1:30-3.4 Rulemaking record
- 1:30-3.5 Negotiating a rule
- 1:30-3.6 Notice of petition for a rule
- 1:30-3.7 Federally required rule

SUBCHAPTER 4. PROCEDURE UPON ADOPTION

- 1:30-4.1 Notice of adopted rule
- 1:30-4.2 Time for filing adopted rule
- 1:30-4.3 Variance between the rule as proposed and as adopted
- 1:30-4.4 Executive Order No. 66(1978); expiration date for adopted rule
- 1:30-4.5 Emergency rule adoption and concurrent proposal
- 1:30-4.6 Effective date and promulgation of adopted rule
- 1:30-4.7 Timely filing of notice of adoption

SUBCHAPTER 1. GENERAL PROVISIONS

1:30-1.1 Short title

The provisions of this chapter shall be known as "The rules for agency rulemaking".

Case Notes

Due process is satisfied when agency rulemaking makes reasonable efforts to accommodate rights and interest of affected individuals. In re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Rulemaking or hybrid rulemaking/adjudicatory proceedings; intra-LATA competition on an industry-wide basis. In the Matter of the Petitions of MCI, Sprint, and AT & T Communications Companies, 94 N.J.A.R.2d (BRC) 36.

1:30-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the Administrative Procedure Act of 1968, P.L. 1968, c.410, as amended and supplemented by P.L. 1978, c.67 and all other amendments and supplements thereto.

“Administrative correction or change” means a correction or change to the text of a rule without formally promulgating the amendment (see N.J.A.C. 1:30-2.7).

“Adopt” means the action whereby a rule is officially approved and authorized for promulgation by an adopting agency.

“Adopting agency” means that agency authorized by law to conduct a rulemaking proceeding.

“Agency” or “State agency” is defined in N.J.S.A. 52:14B-2(a).

“Adopting agency head” means either that person designated by statute as authorized to promulgate rules, or the principal executive officer or an authorized adopting agency.

“Amend” means to adopt a rule which modifies, alters, revises or suspends the operative effect of a previously promulgated rule.

“Appendix” means any collateral material which serves to clarify, illustrate, or explain a rule.

“Code” means the New Jersey Administrative Code, published pursuant to N.J.S.A. 52:14B-7(a).

“Codify” means to devise, pursuant to N.J.S.A. 52:14B-7(f), the form in which rules are published to achieve a logical and consistent arrangement of the provisions.

“Director” means the Director of the Office of Administrative Law.

“Division of Administrative Rules” means that Division of the Office of Administrative Law to which documents shall be submitted for publication in the New Jersey Register; which reviews such documents for compliance with this chapter and the Act; which maintains permanent records concerning rule promulgation; and which provides assistance to agencies concerning the preparation, consideration, publication and interpretation of rules.

“Document” means any writing submitted to the Office of Administrative Law by an agency for the purpose of filing, publishing, or other processing pursuant to law. The singular of this term refers to the entirety of each writing although such writing establishes or affects more than one rule or subject matter, or consists of more than one page or part.

“Effective” means that a rule, pursuant to the Constitution, the Act and this chapter, has been duly adopted, filed with the Office of Administrative Law, and in the case of a new rule, amendment, or repeal, promulgated in the New Jersey Register. A readoption is effective upon timely filing with the OAL.

“Emergency adoption” means the promulgation of an amendment, repeal or new rule without public comment in response to an imminent peril to the public health, safety and welfare (see N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-4.5).

“Executive Order No. 27(1994)” means the 27th executive order issued by Governor Whitman in 1994. Commonly referred to as the “Federal standards” provision, the executive order requires a statement or analysis as to whether a rule exceeds standards or requirements imposed by Federal law. Federal law includes statutes, rules, regulations, orders, directives or guidelines.

“Executive Order No. 66(1978)” means the 66th executive order issued by Governor Byrne in 1978. Commonly referred to as the “Sunset” provision, the executive order requires the establishment of an expiration date for a promulgated rule which is not later than five years from the rule’s effective date.

“Exempt agency” means any agency excluded from the requirements of the Administrative Procedure Act because it does not meet the definition of “agency” in N.J.S.A. 52:14B-2(a).

“Exempt rule” means any rule of an exempt agency or a rule of a non-exempt agency which, pursuant to Executive Order 66(1978), does not require an expiration date.

“File” means the action whereby a copy of a document is received by the Division of Administrative Rules; stamped with the date and time of receipt; entered into the registry; and thereafter accepted for publication by the Director. All documents accepted for publication shall be considered filed as of the date of receipt.

“Intra-agency statement” means a communication between members of a single agency that does not substantially impact upon the rights or legitimate interests of the regulated public.