

(c) When a public hearing on a notice of pre-proposal or a notice of proposal is scheduled for a time after the 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 notice of proposal, or as thereafter extended.

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

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).

Recodified from N.J.A.C. 1:30-3.3 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

Rewrote (a); in (c), deleted "30-day" preceding "public comment period"; substituted "notice of proposal" for "proposed rule" and inserted "notice of" preceding "pre-proposal" throughout the section.

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).

1:30-5.5 Public hearings

(a) An agency shall conduct a public hearing on a proposed rulemaking if requested to do so by a Legislative Committee, a State agency, or a county, local or municipal governmental entity or if sufficient public interest is shown. The party requesting the public hearing shall submit the request to the agency within 30 days following publication of the notice of proposal in the Register. The party requesting the public hearing shall also submit a copy of the request to the Office of Administrative Law.

1. "Sufficient public interest" for conducting a public hearing pursuant to this subsection shall be determined by the proposing agency based upon definite standards it has adopted as part of its rules of practice required under N.J.S.A. 52:14B-3(2).

(b) If a public hearing is to be held as part of a proceeding for a pre-proposal or a proposal, 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 proposal, notice of the public hearing shall be contained in the notice of pre-

proposal or proposal published in the New Jersey Register.

2. When a public hearing is scheduled after the notice of pre-proposal or proposal 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) All public hearings shall be conducted by a hearing officer, who may be an official of the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to N.J.S.A. 52:14F-5 or an independent contractor.

(d) Hearings shall be conducted at such times and in locations which shall afford interested parties the opportunity to attend.

(e) If the agency has made a proposal, at the beginning of each hearing or series of hearings the agency shall present a summary of the factual information on which its proposal is based, and shall respond to questions posed by any interested party.

(f) The hearing officer shall make recommendations to the agency regarding the adoption, amendment or repeal of a rule. These recommendations shall be made public.

(g) In addition to any other publication of the results of the public hearing, 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 (g)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.

(h) The public hearing shall be recorded electronically or stenographically, and audio tapes, stenographic tapes or

other untranscribed record of the proceeding shall be maintained by the agency. If a copy of the record is requested by any interested person, the agency shall arrange for the production of a copy of the record. After the requester pays the agency's actual cost for the copy, the copy shall be delivered to the requester.

New Rule, R.1991 d.85, effective February 19, 1991.

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

Administrative correction to (d).

See: 23 N.J.R. 847(b).

Recodified from N.J.A.C. 1:30-3.3A and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

Rewrote the section.

1:30-5.6 Rulemaking record

(a) The agency shall retain a record of any oral and written comments or other material received in response to a proposal (N.J.A.C. 1:30-5.1) or a public hearing (N.J.A.C. 1:30-5.5) for a period of one year following the date of publication. The rulemaking record shall include the following:

1. The date, the method of issuance and a copy of any notices concerning the rule activity, including:

i. Any notice mailed to interested persons pursuant to N.J.A.C. 1:30-5.2(a)3;

ii. Any notice distributed to the news media pursuant to N.J.A.C. 1:30-5.2(a)4;

iii. Any notice made available electronically pursuant to N.J.A.C. 1:30-5.2(a)5; and

iv. Any additional publicity pursuant to N.J.A.C. 1:30-5.2(a)6.

2. A description of the public comments on the notice of proposal:

i. The names of the persons commenting on the notice of proposal;

ii. The name of any trade, craft or professional organization or association making written or oral submissions;

iii. A copy or summary of each written submission and a summary of each oral submission of any person made in response to the notice of proposal, and any written answer of the agency;

iv. The certificate of the adopting officer attesting that all submissions were examined and that due consideration was given to their merits prior to adoption of the proposed rule. A copy of the signed Certificate of Proposal, Adoption and Promulgation (form OAL/APF-[date]) shall satisfy this requirement;

v. A description of the principal points of controversy revealed during the proceeding; and

vi. A statement of the reasons for accepting and rejecting the public comments.

3. A description of any public hearing or other proceeding which was held as a result of the notice of proposal (see N.J.A.C. 1:30-5.5), including:

i. The date, time and place;

ii. The name and title or position of the presiding person;

iii. The nature of the proceeding; and

iv. The recommendations of the hearing officer, in the case of a public hearing conducted pursuant to N.J.S.A. 52:14B-4(g).

(b) An agency may, but is not required to, maintain a record of any proceedings conducted pursuant to N.J.A.C. 1:30-5.3. If, however, any preliminary proceedings conducted pursuant to N.J.A.C. 1:30-5.3 result in a formal proposed rulemaking, the agency shall discuss in the proposal Summary such preliminary proceedings and the public's participation therein.

(c) If the proposed rule is adopted, the agency shall retain the rulemaking record for a period of not less than three years from the effective date of the adopted rule.

(d) The rulemaking record constitutes an official document of the administrative agency, is evidence of its compliance with the legislative mandate to provide opportunity for public comment, and shall be available for public inspection at the agency.

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

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

Section heading was "Record of the public comment". In (a), stipulated record of any "oral and written" comments, deleted pre-proposal requirement, and added public hearing requirement; corrected references in (a)1. Added new (b), regarding preliminary proceedings; redesignated existing (b) and (c) as (c) and (d).

Amended by R.1996 d.79, effective February 20, 1996.

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

Recodified from N.J.A.C. 1:30-3.4 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

In (a), rewrote 1, substituted "proposal" for "proposed rule" in 2i through 2iii, substituted "[date]" for "-1" in 2iv, substituted "notice of proposal" for "proposed rule" in 3 and amended N.J.A.C. references throughout; in (b), amended N.J.A.C. references throughout.

1:30-5.7 Negotiating a rule

(a) When an agency desires to negotiate the language of a rule proposal, the agency may voluntarily seek the assistance of the OAL in accordance with the following provisions. The negotiating a rule procedure established herein is separate and apart from any methods an agency may utilize to conduct a pre-proposal proceeding.

(b) An agency wishing to negotiate a proposal shall submit a written request to the Division of Administrative Rules, together with a summary of the subject matter; the problem and purpose which the agency contemplates addressing; a list of the interests affected; and the suggested representatives (negotiating team) of these interests.

(c) Each agency and interest group shall have one representative.

(d) A negotiation team shall be composed of no more than 10 members, including the OAL representative.

(e) The Division of Administrative Rules shall review the request, contact the agency and representative(s) of interests, if needed, and then determine whether the subject matter is feasible to negotiate (that is, appropriate for non-adversarial fact-finding and consensus); the interests involved are clearly defined; representatives of the interests sufficiently diverse, and that each representative is accountable to his or her interest group.

(f) Once the Division of Administrative Rules has determined that negotiations should commence, a notice of rule negotiation shall appear in the New Jersey Register. The notice shall identify the subject matter, interests, participants in the negotiation, and the OAL representative. Any interested party who is not heretofore represented on the negotiation team may file a petition for participation with the OAL representative.

(g) The petition for participation shall be a letter addressed to the OAL representative which outlines the petitioner's interests, and why they are not represented by the current composition of the negotiating team. The petition shall be received by OAL no later than 10 days after the notice of negotiation appears in the Register. The OAL representative will then determine within five business days of receipt of the petition whether to include the petitioner.

(h) The OAL representative shall convene the negotiation team within 20 days of notice of negotiation in the Register. The negotiation shall be completed within 10 days of commencement of same, unless all participants agree to continue.

(i) The OAL representative will provide all participants with a final version of a negotiated rule in the form required by N.J.A.C. 1:30-5.1 within 10 days of the completion of the negotiations.

(j) The agency shall either propose the rules negotiated or notify the OAL and all representatives that it rejects the negotiation within 30 days or such further period as agreed between the OAL Director and the head of the agency that had requested the negotiation.

(k) If, after 60 days from the commencement of the negotiation, no negotiated rule has been approved, the OAL

representative may terminate the negotiation and disband the negotiating team. A notice of this action shall appear in the next available Register.

Amended by R.1996 d.79, effective February 20, 1996.

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

Recodified from N.J.A.C. 1:30-3.5 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

In (i), amended N.J.A.C. reference.

1:30-5.8 Federally required rule

(a) Pursuant to N.J.S.A. 52:14B-4.4, a Federally required proposed rule is not required to be submitted to the Legislature.

(b) A proposed rule is a Federally required rule if the specific provisions of the proposed rule are prescribed by Federal statute, rule or ruling, so that the agency exercises no discretion as to whether to promulgate the rule and as to what is prescribed by the rule.

(c) Where an agency claims that a proposed rule is Federally required, the agency shall submit as part of the notice of proposal a citation for the Federal statute, rule or ruling involved and an explanation of the Federal requirement.

Recodified from N.J.A.C. 1:30-3.7 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

In (c), substituted "proposal" for "proposed rule".

SUBCHAPTER 6. PROCEDURE UPON ADOPTION

1:30-6.1 Notice of adoption

(a) When (a) an agency adopts a proposed rule, the agency shall prepare a "notice of adoption" and submit the notice to the OAL. The notice of adoption shall comply with the requirements of this section.

(b) The notice of adoption shall contain, in the following order:

1. The heading of the Administrative Code Title affected (for example, the heading of Title 19 is "Other Agencies");

2. The element within the adopting agency (for example, the Division or Bureau) originating the notice;

3. A caption describing the subject matter of what is adopted;

4. The N.J.A.C. citation for any adopted new rule and the existing citation for any rule(s) amended, repealed or readopted;

5. After "Proposed:", the publication date of the notice of proposal and the New Jersey Register citation of that notice;

6. After "Adopted:", the date of adoption and the name, title and signature of the adopting agency head or any other person authorized by statute to adopt agency rules;

7. After "Filed:", the date the notice of adoption is filed with the OAL and whether what is adopted is adopted "without change" from the proposal, or with "changes not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3)";

8. After "Authority:", a citation to the specific N.J.S.A. statutory authority for the adoption 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 must have been made in the proposal Summary;

9. After "Effective Date:", the effective date of the adoption;

10. If applicable, after "Operative Date:", the operative date of the adoption if later than the date of Register publication;

11. After "Expiration Date:", the expiration date(s) of the rule(s) adopted, amended, repealed or readopted established in accordance with N.J.A.C. 1:30-6.4. If the rule(s) affected is exempt from having an expiration date, a statement of that exemption, including its basis, shall be provided;

12. If appropriate, a Summary of Hearing Officer's Recommendations and Agency Responses pursuant to N.J.A.C. 1:30-5.5;

13. A Summary of Public Comments and Agency Responses, that shall include a summary of the comments, arguments, data and views received and points of controversy developed during the rulemaking proceeding; the reasons for adopting the public comments accepted; and the reasons for rejecting the public comments rejected;

i. Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, this Summary shall include the names of all persons who submitted oral or written comments, arguments, data and views concerning the proposal. If the person is commenting on behalf of an entity, the adopting agency shall list as the commenter either the person and the entity for which the person is commenting, or the entity alone;

14. Summary of Changes Upon Adoption, describing any changes between the rules as proposed and adopted, and the reasons for the changes. Changes upon adoption described and explained in the notice in response to a comment need not be included in this Summary, in which case this portion of the notice would be a Summary of Agency-Initiated Changes;

15. A Federal Standards Statement, or a Federal Standards Analysis and agency head certification, as required by N.J.A.C. 1:30-5.1(c)4.

i. If there are no changes upon adoption, the statement or analysis published as part of the proposal may be included;

ii. If there are changes upon adoption which affect whether or not the rule exceeds Federal standards or requirements or which require reproposal, the changes shall be evaluated and a new statement or analysis prepared pursuant to N.J.A.C. 1:30-5.1(c)4iii; and

16. The text of any changes between the rules as proposed and as adopted, specifically indicating additions and deletions.

(c) Along with a notice of adoption pursuant to (a) and (b) above, the agency shall also complete and submit to the OAL a Certificate of Proposal, Adoption and Promulgation (form OAL/APF-[date]) signed by the adopting agency head, or other person authorized by statute to adopt rules, that the rule was duly adopted according to law and in compliance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and of this chapter.

Administrative correction: Deleted "rejections of the public views rejected" and inserted correct text "adoption of the ..."

See: 19 N.J.R. 777(a).

Amended by R.1987 d.346, effective August 17, 1987.

See: 19 N.J.R. 676(a), 19 N.J.R. 1544(a).

Deleted "Certification" from (a)1 and substituted "A Certificate of Proposal ... OAL/ARP-1 signed".

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 "Requirements for filing an adopted rule."

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).

Inserted new (c)8.

Amended by R.2001 d.52, effective February 5, 2001.

See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).

Recodified from N.J.A.C. 1:30-4.1 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

Rewrote section.

1:30-6.2 Time for filing notice of adoption

(a) No notice of adoption, other than that for an emergency rule, organizational rule or a Federally required rule, shall be accepted for filing until either 60 days after the submission of the notice of proposal by the Office of Administrative Law to the Senate and Assembly or the passage of whatever comment period is established under N.J.A.C. 1:30-5.4(a), whichever is later.

(b) Any notice of adoption submitted for filing shall be reviewed by the Office of Administrative Law not more than five business days after the submission deadline for notices of adoption for the issue of the New Jersey Register for which the notice was submitted. Any notice of adoption which is found to be in non-compliance with N.J.S.A. 52:14B-1 et seq. and the rules contained in this chapter shall be subject to the provisions of N.J.A.C. 1:30-1.12.

(c) If a proposal has not been adopted and filed with the OAL within one year from the date the notice of proposal was published in the New Jersey Register, the proposal expires. Before the proposed rule amendment, repeal or readoption can be adopted, the agency must resubmit the notice of proposal for publication in the Register and must comply again with the notice and opportunity to be heard requirements of the Act.

Recodified from N.J.A.C. 1:30-4.2 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).
See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

In (a), substituted "notice of adoption" for "adopted rule", substituted "notice of proposal" for "proposed rule" and amended N.J.A.C. reference; rewrote (b) and (c).

1:30-6.3 Variance between the rule as proposed and as adopted

(a) Where, following the notice of proposal, an agency determines to make changes in the proposed rule which are so substantial that the changes effectively destroy the value of the original notice, the agency shall give a new notice of proposal and public opportunity to be heard.

(b) In determining whether the changes in the proposed rule are so substantial, consideration shall be given to the extent that the changes:

1. Enlarge or curtail who and what will be affected by the proposed rule;
2. Change what is being prescribed, proscribed or otherwise mandated by the rule;
3. Enlarge or curtail the scope of the proposed rule and its burden on those affected by it.

(c) Where the changes between the rule as proposed and as adopted are not substantial, the changes shall not prevent the adopted rule from being accepted for filing. Changes which are not substantial include:

1. Spelling, punctuation, technical, and grammatical corrections;
2. Language or other changes, whose purpose and effect is to clarify the proposal or correct printing errors; and
3. Minor substantive changes which do not significantly enlarge or curtail the scope of the rule and its burden, enlarge or curtail who or what will be affected by the rule, or change what is being prescribed, proscribed or mandated by the rule.

Recodified from N.J.A.C. 1:30-4.3 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

In (a), substituted "proposal" for "proposed rule".

Case Notes

Board of Public Utilities was not required to request additional notice and comments after initial rule proposal and comment period with respect to regulations establishing rate caps on alternate operator service (AOS) providers in telecommunications industry, where there were no changes to actual regulations proposed by the Board, and final rules were essentially identical to those proposed by the Board. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Board of Public Utilities' adoption of rate caps on alternate operator service (AOS) providers in telecommunications industry after change in operator service provider's (OSP) rates which Board selected as appropriate benchmark for calls which required intervention of live operator was not arbitrary, capricious, or an abuse of discretion, where the Board stated that it analyzed OSP's increase and was satisfied that caps were still reasonable and met Board's goal of striking a balance between financial integrity of payphone providers and public interest, Board specifically relied on fact that rates for calls which required intervention of a live operator could be increased an additional \$1.00 to \$5.25, and Board concluded that the \$1.00 raise would serve to further mitigate any charges or other costs that might be incurred. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Changes regarding the Board of Public Utilities' assumptions underlying proposed rule did not render Board's adoption of rate caps on alternate operator service (AOS) providers in telecommunications industry arbitrary, capricious, and an abuse of discretion. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

To determine whether re-proposal of rule is required, the court must focus on whether changes in text of rule which occurred after initial publication and before adoption of final rule destroyed value of original notice. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

When material changes in the text of a proposed rule occur after initial publication and before adoption of final rule, agency must issue and publish further notice seeking comments prior to adoption of final version of rule. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Agency provided sufficient notice and opportunity to comment on proposed regulations to trade organization where changes favorable to organization were made in response to organization's comments. Matter of Adoption of Amendments to N.J.A.C. 7:27-16, 244 N.J.Super. 334, 582 A.2d 824 (A.D.1990).

Regulation definition as adopted was not so substantially different from version proposed as to require agency to hold new hearings with opportunity for new public comment. Appeal of Adoption of N.J.A.C. 7:7A-1.4 (Definition of "Documented Habitats For Threatened and Endangered Species" and "Swale"), 7:7A-2.5(b)(2), and 7:7A-2.7(f), 240 N.J.Super. 224, 573 A.2d 162 (A.D.1989), reversed 118 N.J. 552, 573 A.2d 143.

Rule adopted differed so substantially from proposal as to violate Administrative Procedure Act. Matter of Adoption of Regulations Governing Volatile Organic Substances in Consumer Products, N.J.A.C. 7:27-23, 239 N.J.Super. 407, 571 A.2d 971 (A.D.1990).

Rules regulating smoking in public places adopted for the state sanitary code by the public health council were invalid. Atty.Gen.F.O. 1978, No. 7.

Public health council could extend effective date of invalid rules regulating smoking in public place by filing an order with the division of administrative procedure amending its order of adoption. Atty.Gen. F.O.1978, No. 7.

1:30-6.4 Expiration date for adopted rule

(a) Every chapter in the Administrative Code in effect as of January 16, 2001 shall expire on July 1, 2006, unless a different expiration date has been established for the chapter in accordance with (f) below or no expiration date is required pursuant to (c) below. Every chapter adopted or readopted on or after July 1, 2001 shall expire five years after the chapter's effective date, unless a sooner expiration date is established in accordance with (f) below or no expiration date is required pursuant to (c) below. Every chapter first effective from January 17, 2001 through June 30, 2001 shall, pursuant to Executive Order No. 66(1978), expire five years after the chapter's effective date, unless a sooner expiration date is established for the chapter or the chapter is readopted in accordance with (f) below, or no expiration date is required under that Executive Order. All notices of adoption filed with the OAL shall include the expiration date(s) of the rules affected by the adoption.

(b) Expiration dates shall be fixed at the chapter level. An adopted new chapter shall have an expiration date no more than five years from the chapter's effective date.

(c) No expiration date need be included where the adopting agency establishes in writing that the rules in a chapter are exempt from the expiration date requirement under (c)1 or 2 below:

1. The provisions of the rules are prescribed by Federal law, so that the agency exercises no discretion as to whether to promulgate the rules and as to what is prescribed by the rules, in which case the Federal law shall be cited in the notice of adoption; or

2. The expiration of the rules would violate any other Federal or State law, in which case the Federal or State law shall be cited in the notice of adoption.

(d) The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

(e) An expiration date shall remain effective, irrespective of any subsequent amendments to the rules, short of a complete repeal and repromulgation of the whole chapter.

1. Any notice of adoption of an amendment to a chapter shall include the expiration date which has been established for the chapter.

(f) In order to maintain the effectiveness of a chapter of rules, the rules must be duly proposed for readoption, adopted and filed prior to the chapter expiration date. Upon the filing of a notice of proposed readoption, the expiration date of the subject chapter shall be extended for 180 days, if such notice is filed with the Office of Administrative Law prior to the chapter expiration date. The readopted rules are effective upon filing with the Office of Administrative Law.

1. The new expiration date shall be calculated from the date of filing.

2. Any amendments to readopted rules are effective upon publication of the notice of adoption.

(g) Any readoption of rules which is proposed and could be adopted prior to their expiration date under (f) above, but is not filed for adoption with the OAL until after the rules' expiration date, shall be considered new rules which are effective upon publication of the notice of adoption in the Register. The new expiration date shall be calculated from the date of publication.

(h) Any proposed readoption of rules which expired before filing of the notice of proposal shall be considered proposed new rules.

Amended by R.1996 d.79, effective February 20, 1996.

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

Provided that expiration date be calculated from date of filing.

Recodified from N.J.A.C. 1:30-4.4 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

Rewrote section.

1:30-6.5 Emergency rule adoption and concurrent proposal

(a) Any agency adopting an emergency rule pursuant to N.J.S.A. 52:14B-4(c) shall comply with the requirements of the adoption procedure. The documents to be filed for an emergency rule adoption shall include:

1. A Certificate of Proposal, Adoption and Promulgation (form OAL/ARP-[year]) signed by the agency head adopting the emergency rule;

2. A written summary of the subject matter of the emergency rules, which includes a finding that there is an imminent peril which necessitates emergency proceedings; the basis for the finding; and social and economic factors which bear upon the finding;

3. A signed statement from the Governor concurring as to the existence of an imminent peril which justifies the emergency rulemaking proceeding; and

4. The text of the emergency rule.

(b) An emergency rule is effective upon filing with the OAL.

(c) Upon filing with the Office of Administrative Law, the OAL shall transmit the Certificate of Proposal, Adoption and Promulgation, the Governor's signed statement, and a copy of the emergency rule to the President of the Senate and the Speaker of the General Assembly.

(d) To continue the provisions of an emergency rule beyond the statutory 60-day period of emergency (see N.J.S.A. 52:14B-4(c)), the agency may propose the provisions of the emergency rule in a notice of proposal which is filed with the OAL at the same time that the emergency adoption is filed. The notice of emergency adoption shall state that the rule is being proposed concurrently. The concurrent proposal shall comply with N.J.A.C. 1:30-5.1 and may be adopted after the comment period. The adoption of the concurrent proposal shall be effective upon timely filing of the notice of adoption with the OAL. As used in the preceding sentence, "timely" means on or before the expiration date of the emergency rule. Any changes to the readopted rule shall be effective upon publication of the notice of adoption.

(e) An adoption of a concurrent proposal filed after the expiration of the emergency rule shall be effective upon publication in the Register.

(f) The provisions of an emergency rule shall not be readopted as an emergency rule.

Amended by R.1987 d.346, effective August 17, 1987.

See: 19 N.J.R. 676(a), 19 N.J.R. 1544(a).

Substantially amended.

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.2001 d.52, effective February 5, 2001.

See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).

Recodified from N.J.A.C. 1:30-4.5 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

In (d), inserted "notice of" preceding "proposal", amended N.J.A.C. reference and inserted sentence preceding last sentence.

Case Notes

Any defect in using order to establish program which should have been established by rule making was cured by emergency regulation. Matter of Producer Assignment Program, 261 N.J.Super. 292, 618 A.2d 894 (A.D.1993), certification denied 133 N.J. 438, 627 A.2d 1144, certification denied 133 N.J. 439, 627 A.2d 1144.

Emergency regulation was permitted to establish producer assignment program applicable to automobile insurers. Matter of Producer Assignment Program, 261 N.J.Super. 292, 618 A.2d 894 (A.D.1993), certification denied 133 N.J. 438, 627 A.2d 1144, certification denied 133 N.J. 439, 627 A.2d 1144.

Emergency adoption must conform with emergency rule-making procedures of Administrative Procedure Act (APA). Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 258 N.J.Super. 290, 609 A.2d 501 (A.D.1992), certification granted 130 N.J. 398, 614 A.2d 620, affirmed in part, reversed in part 133 N.J. 206, 627 A.2d 614.

Emergency regulations adopted prior to effective date of enabling legislation upheld; remanded for public notice and hearing in interest of justice (citing former rulemaking regulations). New Jersey Assn. of

Health Care Facilities v. Klein, 182 N.J.Super. 252, 440 A.2d 476 (App.Div.1981).

1:30-6.6 Effective date and promulgation of adopted rule

(a) The following rules are effective upon filing with the Office of Administrative Law:

1. Any rule adopted as an emergency rule pursuant to N.J.A.C. 1:30-6.5(b) and (d);
2. Any rule readopted pursuant to N.J.S.A. 52:14B-5.1 (see N.J.A.C. 1:30-6.4(f));
3. Any rule adopted as an organizational rule pursuant to N.J.S.A. 52:14B-4(b); or
4. Any concurrent rule the adoption of which is filed prior to the expiration of the emergency rule.

(b) Any other adopted rule is effective upon publication in the New Jersey Register.

Amended by R.1996 d.79, effective February 20, 1996.

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

Recodified from N.J.A.C. 1:30-4.6 and amended by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

In (a)1, amended N.J.A.C. references; in (a)2, amended N.J.A.C. references and deleted "Executive Order No. 66(1978)" and inserted N.J.S.A. reference; in (b), substituted "publication" for "promulgation".

Case Notes

Public health council could extend effective date of rules regulating smoking in public place as part of the state sanitary code which were invalid due to procedural defect of lack of a hearing, by filing an order with the division of administrative procedure amending its order of adoption and thereby allowing additional time for it to submit a new proposal in a procedurally correct manner. Atty.Gen.F.O.1978, No. 7.

1:30-6.7 Timely filing of notice of adoption

In order to avoid the expiration of a chapter or a proposed rulemaking, or to avoid a break in effectiveness between an emergency adoption and the adoption of a concurrent proposal, a notice of adoption shall be filed on or before the expiration date of the chapter, proposal or emergency adoption. If such date falls on a Saturday, Sunday or legal holiday, the filing shall occur no later than the next business day after the expiration date.

New Rule, R.1996 d.79, effective February 20, 1996.

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

Amended by R.2001 d.52, effective February 5, 2001.

See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).

Substituted "next" for "last" preceding "business day" and "after" for "prior to" preceding "the expiration date."

Recodified from N.J.A.C. 1:30-4.7 by R.2001 d.193, effective June 4, 2001 (operative July 1, 2001).

See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).