

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

Introduction to administrative law, or what is this thing called administrative law? Barbara A. Harned, 180 N.J.Law. 9 (Mag.) (Oct./Nov. 1996).

Legislative review of agency rules. Mark D. Schorr, 180 N.J.Law. 30 (Mag.) (Oct./Nov. 1996).

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

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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 substantial-

ly impact upon the rights or legitimate interests of the regulated public.

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

“Joint Proposal and Joint Adoption” is the process by which two or more agencies, with concurrent or complementary jurisdiction, jointly propose and adopt identical rules, at the same time. The process may be mandated by legislation or voluntarily initiated, where appropriate.

“Negotiating a rule” means the process whereby an agency requests, and the OAL provides a representative to conduct a preliminary, non-adversarial proceeding with respect to a contemplated rulemaking proceeding, and which results in a rule presented to the “adopting agency” head in the form required by N.J.A.C. 1:30-3.1.

“Notice of petition for a rule” means that document described in N.J.A.C. 1:30-3.6 which must be submitted to the Office of Administrative Law for publication in the Register when a request for agency rulemaking action is made by an interested person, pursuant to N.J.S.A. 52:14B-4(f).

“Notice of pre-proposal for a rule” means that document described in N.J.A.C. 1:30-3.2 which must be submitted to the Office of Administrative Law for publication in the New Jersey Register, when an agency determines to conduct, pursuant to N.J.S.A. 52:14B-4(e), a preliminary proceeding with respect to a contemplated rulemaking proceeding or when, pursuant to N.J.A.C. 1:30-3.2, a pre-proposal shall be submitted.

“Notice of proposed rule” means that document described in N.J.A.C. 1:30-3.1 which must be submitted to the Office of Administrative Law for filing and then publication in the New Jersey Register and distribution to the Legislature and interested persons.

“Operative” means that the adopting agency shall enforce and the affected public shall obey the terms of an effective rule. Unless otherwise specified in the rule, a rule becomes operative when effective.

“Organizational rule” means a rule promulgated pursuant to N.J.S.A. 52:14B-3(l), including a description of the structure of the agency; the persons from whom and places from which information, applications and other forms may be obtained; and the persons to whom and places to which applications, requests and other submissions may be made.

“Person” means any natural individual, association, board, venture, partnership, corporation, organization, institution and governmental instrumentality recognized by law for any purpose whatsoever.

“Pre-proposal” means a preliminary proceeding for the purpose of eliciting ideas, views and comments of interested

persons on a contemplated rulemaking proceeding, pursuant to N.J.A.C. 1:30-3.2(b). This preliminary proceeding precedes the filing of a formal rule proposal.

“Promulgate” means to proclaim officially in the Register and thereby render effective a new rule, amendment or repeal which was duly adopted by an agency and filed with the Office of Administrative Law.

“Propose” means the action whereby an adopting agency submits a notice of proposed rule to the Office of Administrative Law for filing and publication by the Director.

“Public hearing” means a legislative type proceeding conducted either as part of a rulemaking or to consider a possible rulemaking which affords the public an opportunity to present to the promulgating agency oral and written comments, arguments, data and views on the rulemaking or the contemplated rulemaking.

“Readopt” means to conduct a rulemaking proceeding for the purpose of continuing in effect an emergency rule which would otherwise expire pursuant to N.J.S.A. 52:14B-4(c) (see N.J.A.C. 1:30-4.5), or a rule which expires pursuant to the “sunset” provisions of Executive Order No. 66(1978) (see N.J.A.C. 1:30-4.4). In a rulemaking proceeding to readopt a rule, the rule continues in effect upon the timely filing of the notice of adoption with the Office of Administrative Law.

“Register” means the “New Jersey Register” published pursuant to N.J.S.A. 52:14B-7(b).

“Registry” means the serial list of documents submitted for filing with the Director.

“Repeal” means to conduct a rulemaking proceeding to declare void a rule, the effect of which is to terminate the legal effect of such rule prospectively only. Any rule so terminated shall continue thereafter to be enforced in and applied to all proceedings, formal or otherwise, initiated pursuant to rule or to law prior to the effective date of such repeal.

“Rule” or “administrative rule” is defined in N.J.S.A. 52:14B-2(e). For purposes of determining effective dates, there are five types of rules: new rules, amendments, repeals, readoptions, and emergency rules.

“Rule activity” means any agency action with respect to a rule authorized or required by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and including a petition for a rule, a pre-proposal for a rule, and rulemaking proceeding.

“Rulemaking proceeding” means those steps which shall be followed pursuant to the Act and this chapter, for a rule to be validly promulgated, and which include the procedures for proposal of a rule, N.J.A.C. 1:30-3.1 et seq., the proper adoption of a rule, and the procedures upon adoption of a rule, N.J.A.C. 1:30-4.1 et seq.

Amended by 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).
Added definition "Appendix".

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

Added "Administrative correction . . .", "Emergency adoption", "Executive Order No. 66(1978)", "Intra-agency statement", "Inter-agency statement", "Public hearing", and "Regulatory material".

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

Deleted "Administrative Rules and Publications" and added "Division of Administrative Rules".

Amended by R.1996 d.120, effective April 1, 1996.
See: 27 N.J.R. 414(a), 28 N.J.R. 1823(a).

Added "Executive Order No. 27(1994)".

Case Notes

Department of health's rules and regulations were void for not having been promulgated in accordance with Administrative Procedures Act. *State v. Leary*, 232 N.J.Super. 358, 556 A.2d 1328 (L.1989).

1:30-1.3 Offices

(a) The Division of Administrative Rules, Office of Administrative Law, is located at Quakerbridge Plaza, Building No. 9, CN 049, Quakerbridge Road, Trenton, New Jersey 08625.

(b) Hours during which documents may be submitted or reviewed are from 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

(c) Information may be obtained by telephoning the following for:

1. Rulemaking information (609) 588-6614;
2. Document filings (609) 588-6613 or 6606; and
3. Administrative Code research (609) 588-6613 or 6606.

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

Added (c).

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

1:30-1.4 Citations to the Code

(a) The New Jersey Administrative Code shall be cited as "N.J.A.C."

(b) The citation of a particular section of the New Jersey Administrative Code shall include the numerical designations of the title, chapter, subchapter and section referred to, preceded by the initials N.J.A.C. As an example, this section would be cited as N.J.A.C. 1:30-1.4.

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

1:30-1.5 Citations to the Register

(a) The New Jersey Register shall be cited as "N.J.R."

(b) The citation to material appearing in the New Jersey Register shall include the volume number, page number and item letter, the volume and page numbers being separated by the initials, "N.J.R." As an example, the second item of page 20 of the January 3, 1995 issue would be cited as 27 N.J.R. 20(b).

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

1:30-1.6 Statutory citations in the Code

Statutory citations will be "N.J.S.A.", the New Jersey Statutes Annotated. This is for the convenience of the public, but the official copy of any statute will be found in the State's unpublished compilation of statutes or in the published yearly pamphlet laws.

1:30-1.7 Use of headings

Title, subtitle, chapter, subchapter, section, article, group, part and division headings contained in the Register or Code are not part of the rule, but are intrinsic parts of the publication. As such, these headings may be used in interpreting the rule.

1:30-1.8 Access to documents

(a) Every document or a copy thereof submitted to the Office of Administrative Law for filing shall be maintained on record by the Division of Administrative Rules.

(b) Any person shall, upon request, be afforded an opportunity to examine any document maintained by the Division of Administrative Rules during business hours 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

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

Added Division name and business hours.

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

1:30-1.9 Copies of documents; fees

(a) Any person may obtain copies of filed documents from the Division of Administrative Rules pursuant to the provisions of N.J.S.A. 47:1A-2 upon payment of a fee as follows:

1. First page to 10th page: \$.75 per page;
2. Eleventh page to 20th page: \$.50 per page;
3. All pages over 20: \$.25 per page.

(b) Original filed documents shall not be released from the custody of the Office of Administrative Law.

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

Added (a)1-3.

Amended by R.1995 d.561, effective November 6, 1995.
See: 27 N.J.R. 416(a), 27 N.J.R. 4279(a).
Increased fees in (a).
Amended by R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

1:30-1.10 Forms

From time to time the Office of Administrative Law may adopt as interagency statements the forms and formats which shall be used in rule activities.

1:30-1.11 (Reserved)

Repealed by R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).
Section was "Computation of time".

1:30-1.12 Compliance

(a) Upon an initial determination by the OAL, that any proposed or adopted rule, pre-proposal for a rule or any notice is not in compliance with the technical or procedural requirements concerning rulemaking, the OAL may temporarily suspend the processing of that document. In such situations, the OAL shall contact the agency to indicate the basis for the initial determination of non-compliance. The OAL and the agency shall mutually review the initial determination. The OAL shall then make a final determination regarding noncompliance. The OAL shall assist the agency in a cooperative effort to obtain compliance.

(b) If the OAL determines that there is an issue of non-compliance which concerns statutory authority, related legal issues, or contested case jurisdiction, it shall refer the matter to the Office of the Attorney General for final determination.

Administrative Correction: "Pre-proposal for a rule" and "mutually review the initial determination. The OAL shall" was omitted in (a).
See: 19 N.J.R. 777(a).

1:30-1.13 Invalidation of rule

In the event that a proposed or adopted rule is suspended or otherwise rendered inoperative or ineffective by Court rule or ruling, by legislative action or by Executive Order, the Office of Administrative Law shall, upon receipt of notice of the event, prepare and publish a notice in the Register and the Code, as appropriate.

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

Clarified that OAL shall prepare notice of invalidation.
Amended by R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

1:30-1.14 Publication filing deadlines

(a) Pursuant to N.J.S.A. 52:14B-7(c), the Director will issue annually a schedule for the filing of documents for publication in the New Jersey Register. The schedule will set forth, for each Register to be published in the following year, the issue publication date, the deadline dates for the filing of proposal and adoption notices, and the minimum 30-day comment deadline for proposals. Notices of proposal, pre-proposal, of proposal comment period extensions and of proposal public hearings shall be filed on or before the proposal filing deadline. Other notices shall be filed on or before the adoption deadline.

(b) The filing deadline for the inclusion of a document in a particular issue of the Register is on or before 12:00 P.M. (noon) on the proposal or adoption date, as appropriate, specified in the publication schedule. Documents filed after the deadline will be included in the filed-for Register issue

at the discretion of OAL. OAL's decision to include a late-filed document will be based upon the length and anticipated complexity of the document, the volume and anticipated complexity of documents timely filed, and availability of staff. Once a determination is made as to the Register issue in which a late-filed document will be published, OAL shall so advise the agency.

New Rule, R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

1:30-1.15 Filing of a document

(a) Upon receipt of a document for filing, there shall be stamped on its face the following:

1. The hour and date of receipt; and
2. The word "received".

(b) Upon acceptance for publication, the document shall be stamped filed and is deemed filed as of the date of receipt.

(c) All proposals shall be assigned a proposed rule number (PRN) by the Division of Administrative Rules. All adoptions shall be assigned a rule document number (R.d.) by the Division of Administrative Rules

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

Technical revisions.
Recodified from 1:30-1.14 and amended by R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

SUBCHAPTER 2. RULEMAKING GENERALLY

1:30-2.1 Clarity of rules

In order to be accepted for filing, a document shall be written in a reasonably simple, clear, understandable manner which is easily readable and offers affected persons and other interested persons fair notice of its provisions. In the case of a rule of a highly complex technical nature, the requirements of simplicity, clarity and understandability shall be applied primarily to the summaries of the rule which are printed with the proposal. The rule itself shall be reasonably simple, clear, and understandable to a person with some subject matter expertise. Any rule activity or notice which does not comply with the technical or procedural requirements concerning rulemaking may be subject to the provisions of N.J.A.C. 1:30-1.12.

1:30-2.2 Incorporation by reference

(a) Specifically designated sections of the following sources may be incorporated into a rule by reference:

1. New Jersey Statutes Annotated;

2. United States Code;
3. New Jersey Session Laws;
4. Code of Federal Regulations;
5. Federal Register;
6. Any uniform system of accounts published by the National Association of Regulatory Utility Commissioners;
7. Any generally available standard published by any of the standardizing organizations listed in the National Bureau of Standards Special Publication 417, Director of United States Standardization Activities or supplements thereto or reissues thereof; or
8. Any other generally available publication approved by the Director.

(b) Any section of a source incorporated by reference shall be made available for public inspection by the adopting agency and shall be available in printed form from the adopting agency or the original source for a reasonable fee.

(c) Any agency incorporating any section of a source by reference shall adopt and file as a rule appropriate language indicating:

1. What is incorporated including either:
 - i. The specific date or issue of the section of the source incorporated; or
 - ii. A statement indicating whether the section incorporated includes future supplements and amendments.
2. Where and how a copy of the section may be obtained.

(d) Except with respect to a section of a source indicated in (a)1 through (a)5 above, an agency shall file with the Office of Administrative Law as part of a proposed or adopted rule a copy of the section incorporated by reference.

(e) Where a State agency rule elaborates on, or summarizes or paraphrases a State or Federal statute or Federal regulation, the rule shall contain a citation of, reference to or footnote on that statute or regulation.

1:30-2.3 Single subject for each section

Each proposed or adopted section shall embrace but one subject, and that shall be expressed in the section heading.

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

1:30-2.4 Authorization for rule activity

(a) A notice of adoption shall be signed by the adopting agency head, or any other person authorized by statute.

(b) A notice of proposed rule or any other rule activity shall be signed either by:

1. The adopting agency head; or
2. By an agency employee who has been duly authorized by the agency head to propose rules, and for whom a written authorization signed by the agency head has been submitted to the Office of Administrative Law.

(c) Any rule activity not properly authorized shall be returned to the agency.

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).

1:30-2.5 Effect of statement for proposed rule

The statements for a proposed rule (N.J.A.C. 1:30-3.1(a)3) and for any change upon adoption of a rule (N.J.A.C. 1:30-4.1(a)5) are not part of the rule, but are intrinsic parts of the proposal and adoption as published in the Register. As such, these statements may be used in interpreting the rule.

1:30-2.6 Official copy of proposed, adopted and promulgated rule

(a) The Register constitutes the authoritative text of any notice printed therein.

(b) The full text printed in the Register of any proposed rule, adopted rule or any change made upon adoption of a proposed rule, constitutes the authoritative text of that proposed rule, adopted rule or change. An official copy of the text printed in the Register shall be kept on file by the OAL.

(c) Where the full text of an adopted rule is not printed in the Register, the full text of the proposed rule printed in the Register, plus the full text of any change printed in the Register upon adoption, constitutes the authoritative text of the adopted and promulgated rule. An official copy of the text printed in the Register shall be kept on file by the OAL.

(d) Where the full text of any proposed rule, adopted rule, or change is not printed in the Register, the authoritative text is the copy submitted by the adopting agency and kept on file by the Office of Administrative Law.

1:30-2.7 Administrative corrections and changes

(a) Upon being advised in writing by an agency or upon its own initiative, with notice to the appropriate agency, the OAL may make an administrative correction or change to any rule published in the New Jersey Register or New Jersey Administrative Code. An administrative correction or change shall be effective upon filing with the OAL.

1:30-3.7 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 proposed rule a citation for the Federal statute, rule or ruling involved and an explanation of the Federal requirement.

SUBCHAPTER 4. PROCEDURE UPON ADOPTION

1:30-4.1 Notice of adopted rule

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

(b) The agency shall complete and submit to the OAL a Certificate of Proposal, Adoption and Promulgation (form OAL/APF-1) 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, P.L. 1968, c.410, as amended by P.L. 1978, c.67 and P.L. 1981, c.21, and of this chapter.

(c) The notice of adopted rule shall also contain:

1. The publication date of the notice of proposed rule;
2. The date of adoption, the name of the agency and the name and signature of the adopting agency head or any other person authorized by statute to adopt agency rules;
3. The date the notice of adopted rules is filed with the OAL;
4. The effective date of the rule;
5. The operative date of the rule if later than the date of Register promulgation;
6. The expiration date of the rule pursuant to Executive Order No. 66 (1978) or an exemption from the Order with reasons for the exemption;
7. A summary of any changes between the rule as proposed and adopted, and the reasons for the changes;

8. A Federal Standards Statement, or a Federal Standards Analysis and agency head certification, as required by N.J.A.C. 1:30-3.1(f)5.

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 the provisions of the Order;

9. Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, the names of all persons who submitted oral or written comments, arguments, data and views concerning the proposed rule. 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;

10. If appropriate, a summary of hearing officer's recommendations and agency responses pursuant to N.J.A.C. 1:30-3.3A(d)3;

11. 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; and

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

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.

Case Notes

Direction to re-publish rule indicated intent for publication of final rule under former rulemaking. *Livingston v. New Jersey State Bd. of Medical Examiners*, 168 N.J.Super. 259, 402 A.2d 967 (App.Div.1979), certification denied 81 N.J. 406, 408 A.2d 800 (1979).

Validity of rule upheld against challenge based on failure to meet notice requirements of 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).

1:30-4.2 Time for filing adopted rule

(a) No adopted rule, other than an emergency rule, organizational rule or a Federally required rule, shall be accepted for filing until either 60 days after the submission of the proposed rule 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. 1:30-3.3(a), whichever is later.

(b) Any adopted rule submitted for filing shall be reviewed by the Office of Administrative Law not more than 10 business days following the receipt of the document by the Office of Administrative Law. Any rule 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 proposed rule was published in the New Jersey Register, the proposal expires. Before the rule can be promulgated, the agency must resubmit the proposal for publication in the Register and must comply again with the notice and opportunity to be heard requirements of the Act.

1:30-4.3 Variance between the rule as proposed and as adopted

(a) Where, following the notice of a proposed rule, 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 proposed rule 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.

Case Notes

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.

1:30-4.4 Executive Order No. 66(1978); expiration date for adopted rule

(a) All adoptions filed with the OAL shall include an expiration date of no more than five years from the date of adoption.

(b) Expiration dates shall be fixed at the chapter level. Any amendment to a chapter that has no expiration date shall receive a five year expiration date which shall attach to and pertain to the entire chapter.

(c) No expiration date need be included where:

1. The provisions of the rule are prescribed by Federal or State statute, Federal regulation, or Court ruling, so that the agency exercises no discretion as to whether to promulgate the rule and as to what is prescribed by the rule; or
2. The establishment of an expiration date for the rule is precluded by a preemptive State or Federal statute or Federal regulation, or any preemptive agreement made pursuant to such statute or regulation, so that the agency exercise no discretion as to whether to repeal or to amend the rule; or
3. The Governor has waived the requirement of an expiration date for the rule; and
4. The agency establishes in writing that the rule is exempt from the expiration date requirement.

(d) Once an expiration date is established:

1. That expiration date remains effective, irrespective of any subsequent amendments to the rule, short of a complete repeal or complete repromulgation of the whole chapter.

2. Any amendment to that subchapter shall include the expiration date which has been established for the chapter.

(e) In order to maintain the effectiveness of a rule, the rule must be duly proposed, adopted and filed prior to its expiration date. The readopted rule is effective upon filing with the Office of Administrative Law.

1. The new Executive Order No. 66(1978) expiration date shall be calculated from the date of filing.



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2. Any amendments to a readopted rule are effective upon publication.

(f) Any re-adoption of a rule which is proposed and could be adopted prior to its expiration date, but is not filed for adoption with the OAL until after its expiration date shall be considered a new rule which is effective upon publication in the Register. The new Executive Order No. 66(1978) expiration date shall be calculated from the date of publication.

(g) Any proposed re-adoption of a rule which will expire before publication of the proposal shall be considered a new rule.

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.

1:30-4.5 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-1) 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.
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 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. 1:30-3.1 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. 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).

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).

1:30-4.6 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. 1:30-4.5(b) and (d);
2. Any rule readopted pursuant to Executive Order No. 66(1978) (see N.J.A.C. 1:30-4.4);
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 promulgation 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).

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.

1:30-4.7 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 last business day prior to 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).