

# **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.2001 d.52, effective January 16, 2001.  
See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).

## **Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 30, Rules for Agency Rulemaking, expires on July 15, 2006. See: 38 N.J.R. 1117(a).

## **Chapter Historical Note**

Chapter 30, Rules for Agency Rulemaking, was adopted as emergency new rules by R.1981 d.83, effective March 6, 1981 (operational March 11, 1981). See: 13 N.J.R. 171(a), 13 N.J.R. 255(d).

Chapter 30, Rules for Agency Rulemaking, was extensively revised 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).

Pursuant to Executive Order No. 66(1978), Chapter 30, Rules for Agency Rulemaking, was readopted as R.1986 d.60, effective February 14, 1986. 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, Rules for Agency Rulemaking, 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, Rules for Agency Rulemaking, was readopted as R.1996 d.79, effective January 16, 1996. See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Rules for Agency Rulemaking, was readopted as R.2001 d.52, effective January 16, 2001. 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).

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
- 1:30-2.9 Organizational rule; rules of practice

### **SUBCHAPTER 3. RULEMAKING CALENDARS**

- 1:30-3.1 Publication of rulemaking calendars
- 1:30-3.2 Calendar amendment
- 1:30-3.3 Exceptions
- 1:30-3.3A (Reserved)
- 1:30-3.4 Calendar copies
- 1:30-3.5 through 1:30-3.7 (Reserved)

### **SUBCHAPTER 4. PETITION FOR RULEMAKING**

- 1:30-4.1 Notice of petition for rulemaking
- 1:30-4.2 Agency response to petition
- 1:30-4.3 Failure to respond to petition
- 1:30-4.4 through 1:30-4.7 (Reserved)

### **SUBCHAPTER 5. PROPOSAL PROCEDURE**

- 1:30-5.1 Notice of proposed rule
- 1:30-5.2 Publication and distribution of notice of proposal
- 1:30-5.3 Informal public input; notice of pre-proposal
- 1:30-5.4 Opportunity to be heard
- 1:30-5.5 Public hearings
- 1:30-5.6 Rulemaking record
- 1:30-5.7 Negotiating a rule
- 1:30-5.8 Federally required rule

### **SUBCHAPTER 6. PROCEDURE UPON ADOPTION**

- 1:30-6.1 Notice of adoption
- 1:30-6.2 Time for filing notice of adoption
- 1:30-6.3 Variance between the rule as proposed and as adopted
- 1:30-6.4 Expiration date for adopted rule
- 1:30-6.5 Emergency rule adoption and concurrent proposal
- 1:30-6.6 Effective date and promulgation of adopted rule
- 1:30-6.7 Timely filing of notice of adoption

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **Law Review and Journal Commentaries**

Introduction to Administrative Law. Barbara A. Harned, 180 N.J.L.J. 9 (1996).

#### **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 Sur-

charge, 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; intraLATA 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, N.J.S.A. 52:14B-1 et seq.

“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 modify, alter, revise or suspend 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. 1:30-6.5).

“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.

“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 N.J.S.A. 52:14B-5.1e, 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.

“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.

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. 1:30-5.1(c)) and for any change upon adoption of a rule (N.J.A.C. 1:30-6.1(b)12 through 15) 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.

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

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

Amended the N.J.A.C. references.

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).

Amended N.J.A.C. references throughout section.

**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.

(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).

### 1:30-2.9 Organizational rule; rules of practice

(a) Each agency shall:

1. Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests; and

2. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency, and, if not otherwise set forth in an agency's rules, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures.

- i. As used in this paragraph, "permit" means any agency license, permit, certificate, approval, charter, registration or other form of permission required by law.

New Rule, 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).  
Amended by R.2001 d.281, effective August 6, 2001.  
See: 33 N.J.R. 1885(a), 33 N.J.R. 2639(c).  
Added (a)2i.

## SUBCHAPTER 3. RULEMAKING CALENDARS

### Authority

N.J.S.A. 52:14B-1 et seq., as amended by P.L. 2001, c.5;  
52:14B-4 and 7; and 52:14F-5(f), (h) and (i).

### Source and Effective Date

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)

### 1:30-3.1 Publication of rulemaking calendars

(a) Each agency shall publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rulemaking notice of proposal activities for the next six months. The calendars shall be published in the first New Jersey Register for the months of January, April, July and October and shall be filed with OAL in accordance with the OAL publication schedule (see N.J.A.C. 1:30-1.14) on or before the filing deadline for notices of proposal.

(b) The calendar shall include:

1. The name of the agency;
2. The name of the agency head;
3. Specific citation to the rules to be affected;
4. Citation to the legal authority authorizing the rule-making action;
5. A synopsis of the rulemaking and its objective or purpose; and
6. The month and year in which publication of the notice of proposal in the New Jersey Register is anticipated.

New Rule, 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).

Former N.J.A.C. 1:30-3.1, Notice of proposed rule, recodified to N.J.A.C. 1:30-5.1 and 1:30-5.2.

### 1:30-3.2 Calendar amendment

(a) An agency shall notify the Director of the Office of Administrative Law when it wishes to amend its calendar of rulemaking activities. Such notice shall be in the form of a revised version of the rulemaking calendar published most recently prior to the amendment, and shall highlight the amendment, both in an explanatory statement and the appearance of the amendment text (additions in boldface, deletions in brackets) within the calendar. Notices of calendar amendment shall be filed with the OAL in accordance with the deadlines for filing notices of proposal set forth in the OAL publication schedule. An agency shall take no action on an amended rulemaking activity until at least 45 days following the first publication of the amended calendar in which the announcement of that amended rulemaking activity appears, if an amendment:

1. Involves the addition of any rulemaking activity to an agency's calendar;

2. Changes the anticipated month of proposal publication to an earlier month; or

3. Alters the objective, purpose or subject matter synopsis of the rulemaking so as to change who or what shall be affected by the rulemaking and/or how they shall be affected.

(b) If a calendar amendment under (a)1 through 3 above appears initially in an agency's quarterly rulemaking calendar, an agency shall take no action on that amended rulemaking activity until at least 45 days following the publication of the quarterly calendar.

New Rule, 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).

Former N.J.A.C. 1:30-3.2, Informal public input; notice of pre-proposal for a rule, recodified to N.J.A.C. 1:30-5.3.

Amended by R.2001 d.281, effective August 6, 2001.

See: 33 N.J.R. 1885(a), 33 N.J.R. 2639(c).

Added (b).

### 1:30-3.3 Exceptions

(a) The provisions of N.J.A.C. 1:30-3.1 and 3.2 shall not apply to rulemaking:

1. Required or authorized by Federal law, when failure to adopt rules in a timely manner will prejudice the State;

2. Subject to a specific statutory authorization requiring promulgation in a lesser time period than addition to a calendar would permit;

3. Involving an imminent peril subject to provisions of N.J.S.A. 52:14B-4(c);

4. For which the agency has published a notice of pre-proposal of the rule in accordance with N.J.A.C. 1:30-5.3(b) and (c); or

5. For which a comment period of at least 60 days is provided.

(b) A proposed rule falling within any of the exceptions in (a) above shall so indicate in the Summary of notice of proposal. If the rule falls under the exception in (a)1 above, the Summary shall include the specific citation of the Federal law requiring or authorizing the rule, and an explanation as to how failure to adopt the rule in a timely manner will prejudice the State.

New Rule, 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).

Former N.J.A.C. 1:30-3.3, Opportunity to be heard, recodified to N.J.A.C. 1:30-5.4.

### 1:30-3.3A (Reserved)

Recodified as N.J.A.C. 1:30-5.5 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).

Section was "Public hearings".

### 1:30-3.4 Calendar copies

(a) Each agency shall include, in that portion of its Internet web site concerned with rulemaking, either its

rulemaking calendar or a notice of the availability of its rulemaking calendar for the fee established at (c) below. If an agency's web site does not feature a portion devoted to rulemaking, the calendar or notice of the availability of the rulemaking calendar shall be included in that portion of the web site otherwise used for public notices and/or information.

(b) In addition to the notice under (a) above, an agency shall provide notice of the availability of its rulemaking calendar for the fee established under (c) below in the same manner as it publicizes its proposed rulemakings under N.J.A.C. 1:30-5.2(a)6.

(c) Agencies shall charge a fee for copies of their rulemaking calendars in accordance with the copying fee schedule at N.J.A.C. 1:30-1.9(a).

New Rule, 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).

Former N.J.A.C. 1:30-3.4, Rulemaking record, recodified to N.J.A.C. 1:30-5.6.

### 1:30-3.5 (Reserved)

Recodified as N.J.A.C. 1:30-5.7 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).

Section was "Negotiating a rule".

### 1:30-3.6 (Reserved)

Recodified as N.J.A.C. 1:30-4.1 and 1:30-4.2 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).

Section was "Notice of petition for a rule".

### 1:30-3.7 (Reserved)

Recodified as N.J.A.C. 1:30-5.8 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).

Section was "Federally required rule".

## SUBCHAPTER 4. PETITION FOR RULEMAKING

### 1:30-4.1 Notice of petition for rulemaking

(a) An interested person may petition an agency to adopt a new rule or amend or repeal an existing rule.

(b) Each agency shall adopt a rule prescribing the form and procedures for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely: the substance or nature of the rulemaking which is requested; the reasons for the request and the petitioner's interest in the request; and references to the authority of the agency to take the requested action. The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.

(c) When a person petitions an agency to begin a rule-making proceeding, the agency shall, within 15 days of receipt of the petition, file with the Office of Administrative Law for publication in the Register a notice of the petition's receipt. The notice of petition shall include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

Administrative Correction: Text was omitted from (b)3.

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

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), specified that agency shall file "a notice of the petition's receipt" for publication in Register; deleted (a)5. In (c)1, added requirements that petitioner be provided with a written statement of reasons for denial and that reasons be included in notice of action. In (c)3, clarified that the nature of further deliberations be specified "to the petitioner and in the notice of action". In (d), added requirement for "consideration and disposition" procedures.

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

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

Recodified in part from N.J.A.C. 1:30-3.6 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).

Added new (a); rewrote (b); recodified former (a) as new (c) and deleted "pursuant to N.J.S.A. 52:14B-4(f)" in the introductory paragraph. Former N.J.A.C. 1:30-4.1, Notice of adopted rule, recodified as N.J.A.C. 1:30-6.1.

#### 1:30-4.2 Agency response to petition

(a) Within 60 days of receipt of a rulemaking petition, the agency shall either:

1. Deny the petition, in which case the agency shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;
2. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or
3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral. Upon conclusion of such further deliberations, the agency shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days. The agency shall mail the results of these further deliberations to the petitioner and submit the results to the OAL for publication in the Register.

(b) Within 60 days of receiving the petition, the agency shall mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which shall include:

1. The name of the petitioner;
2. The Register citation for the notice of petition;

3. The signature of the agency head, signifying that the petition was duly considered pursuant to law;

4. The nature or substance of the agency action upon the petition; and

5. A brief statement of reasons for the agency action.

Recodified in part from N.J.A.C. 1:30-3.6 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).

Rewrote section. Former N.J.A.C. 1:30-4.2, Time for filing adopted rule, recodified as N.J.A.C. 1:30-6.2.

#### 1:30-4.3 Failure to respond to petition

(a) If an agency fails to act in accordance with the time frames set forth in N.J.A.C. 1:30-4.2(a), the petitioner may request, in writing, a public hearing on the petition by submitting a request to the Director of the Office of Administrative Law.

(b) Upon receipt of a request for a hearing, the Director shall order a public hearing on the rulemaking petition. The Director shall provide the agency with a notice of the Director's intent to hold the public hearing if the agency does not.

(c) If the agency does not provide notice of a public hearing within 15 days of issuance of the Director's notice, the Director shall schedule a public hearing to be conducted by the Office of Administrative Law. Notice of that hearing shall be provided to the petitioner and the public at least 15 days prior to the hearing.

(d) If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, 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 assigned by the Director.

(e) The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition and a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in N.J.A.C. 1:30-5.5(d), except that the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition.

(f) The report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rule-making.

New Rule. 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).



Former N.J.A.C. 1:30-4.3, Variance between the rule as proposed and as adopted, recodified to N.J.A.C. 1:30-6.3.

**1:30-4.4 (Reserved)**

Recodified as N.J.A.C. 1:30-6.4 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).

Section was "Executive Order No. 66(1978); expiration".

**1:30-4.5 (Reserved)**

Recodified as N.J.A.C. 1:30-6.5 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).

Section was "Emergency rule adoption and concurrent proposal".

**Case Notes**

Agency may adopt emergency regulations without strict notice and comment procedures if it finds an imminent peril to the public health, safety, or welfare requires adoption of a rule. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Parents of disabled students and organizations representing interests of children with disabilities, seeking order requiring the state Department of Education to conduct emergency rule-making to permit promulgation of new special education regulations, failed to demonstrate "imminent peril" to public health or safety required to justify departure from strict notice and comment procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

**1:30-4.6 (Reserved)**

Recodified as N.J.A.C. 1:30-6.6 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).

Section was "Effective date and promulgation of adopted rule".

**1:30-4.7 (Reserved)**

Recodified as N.J.A.C. 1:30-6.7 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).

Section was "Timely filing of notice of adoption".

**SUBCHAPTER 5. PROPOSAL PROCEDURE**

**1:30-5.1 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 proposal" and submit the notice to the OAL. The notice of proposal shall comply with the requirements of this section.

(b) The notice of proposal shall include a heading, that shall include, 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 proposing agency (for example, the Division or Bureau) originating the notice;

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

4. A suggested N.J.A.C. citation for any proposed new rule and the existing citation for any rule(s) proposed for amendment, repeal or readoption;

5. After "Authorized By:", 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;

6. After "Authority:", a citation to the specific N.J.S.A. statutory authority for the proposal 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;

7. After "Calendar Reference:", the New Jersey Register publication date and citation of the rulemaking calendar most recently prior to the anticipated publication date of the notice of proposal.

i. If the rulemaking is excepted from the prior calendar listing requirement under N.J.A.C. 1:30-3.3(a), this heading item shall reference the notice Summary. The Summary shall contain the explanation of the exception required under N.J.A.C. 1:30-3.3(b). For example, the heading item may read, "Calendar Reference: See Summary below for explanation of exception to calendar requirement.";

8. An item headed "Proposal Number:" which shall be completed by OAL; and

9. An announcement of the public's opportunity to be heard regarding the proposal, which shall include:

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

(c) The notice of proposed rule shall include a brief statement of the proposed rulemaking, which shall include, in the following order:

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 therefore;

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 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;

5. 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;

6. An agriculture industry impact statement setting forth the nature and extent of the impact of the proposed rule on the agriculture industry;

7. A regulatory flexibility statement or analysis:

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; and

(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 (c)7iv 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; and

8. A smart growth impact statement which shall describe the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

(d) The notice of proposal 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 recodified.

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.  
Amended by R.1998 d.555, effective November 16, 1998.  
See: 30 N.J.R. 3123(a), 30 N.J.R. 4037(a).

In (f), added 7.  
Recodified from N.J.A.C. 1:30-3.1 (a) through (g) 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.  
Amended by R.2002 d.187, effective June 17, 2002.  
See: 34 N.J.R. 1074(a), 34 N.J.R. 2027(a).  
In (c), added 8.

#### 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).

#### 1:30-5.2 Publication and distribution of notice of proposal

(a) Upon OAL's receipt of a notice of proposal which conforms to the requirements of N.J.A.C. 1:30-5.1:

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

3. The agency shall mail either the notice of proposal, 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;

4. The agency shall distribute either the notice of proposal, as filed, or a statement of the substance of the proposed action to the news media maintaining a press office in the State House Complex;

5. The agency shall make available electronically on its web site, through the largest nonproprietary cooperative public computer network, either the notice of proposal, as filed, or a statement of the substance of the proposed action; and

6. 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. Each agency shall adopt rules prescribing the manner in which it shall provide additional publicity under this paragraph, which rules shall set forth the circumstances under which each additional method shall be employed.

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.

(b) Additional notice of the proposal under (a)3 through 6 above shall be provided at least 30 days prior to the close of the public comment period.

(c) Any notice of proposal which does not meet the requirements in N.J.A.C. 1:30-5.1 and this section 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.

Amended by R.1998 d.555, effective November 16, 1998.

See: 30 N.J.R. 3123(a), 30 N.J.R. 4037(a).

In (f), added 7.

Recodified from N.J.A.C. 1:30-3.1(h) through (i) 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.

#### 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).

#### 1:30-5.3 Informal public input; notice of pre-proposal

(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" to the OAL for publication in the *New Jersey Register* at least 30 days prior to submission of any formal notice of proposal on the same subject.

(c) The notice of pre-proposal 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).

Recodified from N.J.A.C. 1:30-3.2 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 (b), deleted "for a rule" following "pre-proposal" and substituted "proposal" for "proposed rule"; in (c), deleted "for a rule".

#### 1:30-5.4 Opportunity to be heard

(a) 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 a notice of proposal.

1. If within 30 days of the publication of a notice of proposal sufficient public interest is demonstrated in an extension of the time for submission of comments, the agency shall provide an additional 30-day period for the receipt of comments by interested parties. The agency shall not adopt the proposed rule until after the end of that 30-day extension.

i. "Sufficient public interest" for granting an extension of the comment period pursuant to this paragraph

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) Where an agency permits any other method of public comment on a notice of pre-proposal or a notice of proposal, 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 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 "-l" 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.

Administrative correction.

See: 34 N.J.R. 1262(a).

### 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.

Administrative correction.

See: 34 N.J.R. 1262(a).

### 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

Adopted rule regarding water quality management planning rules for septic-reliant developments was a significant change from noticed proposal to which public responded regarding comprehensive change in clean water policy, and thus new notice of proposal and public opportunity to be heard were required. In Re Amendments N.J.A.C. 7:15-8, 349 N.J.Super. 320, 793 A.2d 773.

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 on or before the chapter expiration date. If the chapter expiration date falls on a Saturday, Sunday or legal holiday, the 180-day expiration date extension shall take effect if the filing of the notice of proposed readoption occurs no later than the next business day after the expiration date. The readopted rules are effective upon filing with the Office of Administrative Law.

1. The new expiration date resulting from the completion of the readoption process shall be calculated from the date of filing of the readoption notice of adoption.

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.

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

Rewrote section.

Amended by R.2002 d.188, effective June 17, 2002.

See: 34 N.J.R. 1075(a), 34 N.J.R. 2027(b).

In (f), inserted a new sentence before the last sentence; rewrote (f)1.

#### 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 APF-[date]) 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;