

TITLE 10

HUMAN SERVICES

CHAPTER 1

**RULES OF PRACTICE;
PETITION FOR RULEMAKING**

Authority

N.J.S.A. 30:1-12 and 52:14B-3 and 4.

Source and Effective Date

R.2007 d.8, effective December 6, 2006.
See: 38 N.J.R. 3406(a), 39 N.J.R. 104(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 1, Rules of Practice; Petition for Rulemaking, expires on June 4, 2014. See: 46 N.J.R. 6(a).

Chapter Historical Note

Chapter 1, Department of Human Services Organization and Public Notice, was adopted as R.1983 d.165, effective May 6, 1983, with Subchapter 2, Public Comments and Petitions regarding Department Rules, adopted pursuant to N.J.S.A. 30:1-12 and 52:14B-4(b), 4(f). See: 15 N.J.R. 924(c). Pursuant to Executive Order No. 66(1978), Chapter 1, Department of Human Services Organization and Public Notice, expired on May 6, 1988.

Chapter 1, Department of Human Services Administration, was adopted as new rules by R.1988 d.504, effective November 7, 1988. See: 20 N.J.R. 1050(a), 20 N.J.R. 2773(a).

Chapter 1, Department of Human Services Administration, containing only Subchapter 2, Public Comments and Petitions regarding Department Rules, was recodified as N.J.A.C. 10:1A by R.1993 d.271, effective June 7, 1993. See: 25 N.J.R. 1042(a), 25 N.J.R. 2557(a).

Chapter 1, Organizational Rules; Rules of Practice; Petition for Rulemaking, was adopted as new rules by R.2001 d.348, effective October 1, 2001. See: 33 N.J.R. 2428(a), 33 N.J.R. 3445(a).

Subchapter 1, Department Mission and Organization, expired on October 1, 2006.

Chapter 1, Organizational Rules; Rules of Practice; Petition for Rulemaking, Subchapter 2, Public Notice and Public Comments Regarding Department Rules; Rulemaking Calendars; Subchapter 3, Additional Opportunity to be Heard Upon Showing of Sufficient Public Interest; and Subchapter 4, Petitions for Rulemaking Regarding Department Rulemaking, were readopted as R.2007 d.8, effective December 6, 2006. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, Organizational Rules; Rules of Practice; Petition for Rulemaking, was scheduled to expire on December 6, 2013. See: 43 N.J.R. 1203(a).

Chapter 1, Organizational Rules; Rules of Practice; Petition for Rulemaking, was renamed Rules of Practice; Petition for Rulemaking by administrative correction. See: 46 N.J.R. 222(a).

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SUBCHAPTER 1. (RESERVED)

**SUBCHAPTER 2. PUBLIC NOTICE AND PUBLIC
COMMENTS REGARDING DEPARTMENT
RULES; RULEMAKING CALENDARS**

10:1-2.1 Public notice regarding proposed rulemaking

(a) The Department shall provide for the following four types of public notice for all rule proposals in accord with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30):

1. The rule proposal shall be filed with the Office of Administrative Law for publication in the New Jersey Register;

2. The notice of the rule proposal, as filed with the Office of Administrative Law, or a statement of the substance of the proposed rulemaking, shall be posted and made available electronically on the Department's web site;

3. The news media maintaining a press office in the State House Complex shall be provided notice of the rule proposal, as posted and made available electronically on the Department's web site; and

4. The notice of the rule proposal, as filed with the Office of Administrative Law, or a statement of the substance of the proposed rulemaking, shall be made available to the public by an additional manner reasonably calculated to inform those persons most likely to be affected or interested in the proposed rulemaking.

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 rulemaking;
 - (2) A statement of the substance of the proposed rulemaking; or
 - (3) A description of the subject and issues involved.
- ii. The additional method of publicity with regard to all rule proposals shall be by either:

- (1) Mailing to a distribution list, when known, organized entities exist that are the subject of or significantly related to the proposed rulemaking; or
- (2) Notice in at least three newspapers of general circulation, when no known, organized entities exist that are the subject of or significantly related to the proposed rulemaking.

10:1-2.2 Public comments regarding existing rules and proposed rulemaking

(a) The Department conducts an ongoing regulatory review and invites public comments regarding all Department rules (N.J.A.C. Title 10). The Department's rulemaking includes all rules adopted after the official public comment period and emergency rules in accord with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30), and all rules adopted immediately upon filing with the Office of Administrative Law in accord with specific legislative authority.

(b) Public comments are specifically sought regarding existing Department rules which may be perceived as being not necessary, adequate, reasonable, efficient, understandable, or responsive to the purposes for which they were promulgated.

(c) Public comments regarding existing rules should be submitted in writing and addressed to:

Department of Human Services
Office of Legal and Regulatory Liaison
PO Box 700
Trenton, NJ 08625-0700

(d) The Department invites the public to utilize the opportunity to be heard during the official public comment period following the publication of a notice of pre-proposal or proposal in the New Jersey Register by means of submitting in writing, data, views, or arguments to the name and unit specified in the notice.

10:1-2.3 Department rulemaking calendar

(a) In compliance with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30), the Department shall publish a quarterly rulemaking calendar in the New Jersey Register setting forth a schedule of the Department's anticipated rulemaking 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.

(b) The rulemaking calendar shall include:

1. The name of the Department;
2. The name of the Commissioner, as 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.

(c) Calendar amendments and exceptions shall be handled by the Department in accord with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30).

(d) The Department rulemaking calendar, as filed with the Office of Administrative Law, as with notices of rule proposals in accord with N.J.A.C. 10:1-2.1(a)3, shall be posted and made available electronically on the Department's web site.

(e) The additional method of publicity with regard to availability of the Department's rulemaking calendar shall be by providing notice of the rulemaking calendar, as posted and made available electronically on the Department's web site, to the major news media maintaining a press office in the State House Complex.

10:1-2.4 Copies of documents; fees

(a) Any person may obtain copies of documents filed with the Office of Administrative Law from the Department, in accord with the provisions of N.J.S.A. 47:1A-1 et seq., as amended, 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; and
3. All pages over 20: \$.25 per page.

SUBCHAPTER 3. ADDITIONAL OPPORTUNITY TO BE HEARD UPON SHOWING OF SUFFICIENT PUBLIC INTEREST

10:1-3.1 Extension of the public comment period

(a) The Department, in accord with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and

the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30), may extend the time for submission of public comments on a proposed rulemaking, at its discretion, without the need for a specific request or the demonstration of sufficient public interest.

(b) The Department, in accord with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30), shall extend the time for submission of public comments for an additional 30-day period, if, within 30 days of the publication of a notice of proposal, sufficient public interest is demonstrated in an extension of time to submit comments.

(c) Sufficient public interest is demonstrated in an extension of the comment period when the following occurs:

1. In the case of the Division of Developmental Disabilities, the Division of Family Development, the Division of Medical Assistance and Health Services, and the Division of Mental Health Services, 50 or more individuals have expressed the need for the extension of the comment period; or

2. In the case of all other Divisions and Department offices, 10 or more individuals have expressed the need for the extension of the comment period.

Amended by R.2007 d.8, effective January 2, 2007.

See: 38 N.J.R. 3406(a), 39 N.J.R. 104(b).

In (c)1, inserted "and" following "Assistance and Health Services," and deleted "and the Division of Youth and Family Services," following "Division of Mental Health Services,".

10:1-3.2 Conducting of a public hearing

(a) The Department, in accord with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30), may conduct a public hearing on a proposed rulemaking, at its discretion, without the need for a specific request or the demonstration of sufficient public interest.

(b) The Department, in accord with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30), shall conduct a public hearing on a proposed rulemaking at the request of a Legislative Committee, a State agency, or a county, local or municipal governmental entity, if such request is made to the Department within 30 days following publication of the proposed rulemaking, or if sufficient public interest is demonstrated.

(c) Sufficient public interest is demonstrated with regard to the conducting of a public hearing when the following occurs:

1. In the case of the Division of Developmental Disabilities, the Division of Family Development, the Division of Medical Assistance and Health Services, and the Division of Mental Health Services, 100 or more individuals

have either expressed the need for a public hearing on the rule proposal or disagreement with one or more substantive provisions of the rule proposal; or

2. In the case of all other Divisions and Department offices, 50 or more individuals have either expressed the need for a public hearing on the rule proposal or disagreement with one or more substantive provisions of the rule proposal.

(d) The Department shall not consider, in the calculation of the number of comments received, those comments that relate to specific recommended changes in the rule that the Department has agreed to make or does not have the legal authority to make.

Amended by R.2007 d.8, effective January 2, 2007.

See: 38 N.J.R. 3406(a), 39 N.J.R. 104(b).

In (c)1, inserted "and" following "Assistance and Health Services," and deleted "and the Division of Youth and Family Services," following "Division of Mental Health Services,".

SUBCHAPTER 4. PETITIONS FOR RULEMAKING REGARDING DEPARTMENT RULEMAKING

10:1-4.1 Department compliance

The Department shall take appropriate action with regards to petitions for rulemaking to ensure compliance with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30).

10:1-4.2 Public petitions process and requirements

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

(b) All petitions shall be clearly and concisely worded and include the following:

1. The substance or nature of the rulemaking which is requested (proposed text material may be provided);
2. The reasons for the request and the petitioner's interest in the request; and
3. References to the authority of the Department to take the requested action.

(c) Petitions shall be addressed to either the specific relevant Division of the Department or the Department Central Headquarters at:

Department of Human Services
Office of Legal and Regulatory Liaison
PO Box 700
Trenton, New Jersey 08625-0700

10:1-4.3 Department action upon receipt of petition

(a) Any material submitted to the Department that is not in substantial compliance with these rules shall not be deemed to be a petition for rulemaking requiring further Department action pursuant to this subchapter, the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30).

(b) The Department shall take appropriate, timely action upon receipt of a petition for rulemaking in accord with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Office of Administrative Law Rules for Agency Rulemaking (N.J.A.C. 1:30). This action shall include the following:

1. The petition shall be date stamped and logged;
2. The petition shall be referred to the relevant Division or handled at the Department level as deemed appropriate;
3. Within 15 days of initial receipt, notice of the receipt of the petition shall be filed with the Office of Administrative Law for publication in the New Jersey Register. The notice of petition shall include:
 - i. The name of the petitioner;
 - ii. The substance or nature of the rulemaking action which is requested;
 - iii. The problem or purpose which is the subject of the request; and
 - iv. The date the petition was received.

4. The Department action on a petition shall be either to:

- i. Deny the petition;
- ii. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or

iii. Refer the matter for further deliberations which shall conclude within 90 days of such referral. Upon conclusion of such further deliberations, the Department shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days. The Department shall mail the results of these further deliberations to the petitioner and submit the results to the Office of Administrative Law for publication in the New Jersey Register.

5. The Department shall mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition within 60 days of initial receipt of the petition. The notice of action shall include:

- i. The name of the petitioner;
- ii. The Register citation for the notice of petition;
- iii. The signature of the Commissioner, as agency head, signifying that the petition was duly considered pursuant to law;
- iv. The nature or substance of the Department action upon the petition; and
- v. A brief statement of reasons for the Department action.