

CHAPTER 1D
GENERAL PRACTICE AND PROCEDURE

Authority

N.J.S.A. 13:1D-1 et seq. and 52:14B-1 et seq., and
Executive Order No. 34 (1976).

Source and Effective Date

R.2011 d.210, effective July 8, 2011.
See: 43 N.J.R. 249(a), 43 N.J.R. 1864(a).

Chapter Expiration Date

Chapter 1D, General Practice and Procedure, expires on July 8, 2018.

Chapter Historical Note

Chapter 1D, Agricultural Preserve Demonstration Program, was adopted as R.1977 d.20, effective January 26, 1977. See: 8 N.J.R. 506(a), 9 N.J.R. 62(b).

Chapter 1D, Agricultural Preserve Demonstration Program, was repealed by R.1980 d.433, effective October 7, 1980. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a).

Chapter 1D, Allocation of Water Supply Costs for Emergency Water Projects, was adopted as R.1983 d.639, effective January 17, 1984. See: 15 N.J.R. 117(a), 16 N.J.R. 130(b).

Pursuant to Executive Order No. 66(1978), Chapter 1D, Allocation of Water Supply Costs for Emergency Water Projects, was readopted as R.1988 d.589, effective November 28, 1988. See: 20 N.J.R. 2197(a), 20 N.J.R. 3135(a).

Pursuant to Executive Order No. 66(1978), Chapter 1D, Allocation of Water Supply Costs for Emergency Water Projects, was readopted as R.1993 d.497, effective September 13, 1993. See: 25 N.J.R. 2635(b), 25 N.J.R. 4595(a). Pursuant to Executive Order No. 66(1978), Chapter 1D expired on September 13, 1998.

Chapter 1D, General Practice and Procedure, was originally codified in Chapter 1 of Title 7 as N.J.A.C. 7:1-1.2, Procedure to petition for a rule, Subchapter 5, Debarment, Suspension and Disqualification from Department Contracting, and Appendix A, Mapping and Digital Data Standards. Chapter 1, Rules of Practice and Procedure, became effective prior to September 1, 1969.

Subchapter 5, Debarment, Suspension, and Disqualification from Department Contracting, of Chapter 1, Rules of Practice and Procedure, was adopted as R.1976 d.318, effective October 13, 1976. See: 8 N.J.R. 375(b), 8 N.J.R. 510(c).

Pursuant to Executive Order No. 66(1978), Chapter 1, Rules of Practice and Procedure, was readopted as R.1990 d.457, effective August 15, 1990. See: 22 N.J.R. 1457(a), 22 N.J.R. 2965(a).

Subchapter 1, General Provisions of the Department of Environmental Protection, was repealed and Subchapter 1, General Provisions of the Department of Protection, was adopted as new rules by R.1992 d.441, effective October 9, 1992. See: 24 N.J.R. 4085(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Rules of Practice and Procedure, was readopted as R.1995 d.480, effective August 7, 1995. See: 27 N.J.R. 2332(a), 27 N.J.R. 3399(b).

N.J.A.C. 7:1-1.2, Procedure to petition for a rule, Subchapter 5, Debarment, Suspension and Disqualification from Department Contracting, and Appendix A, Mapping and Digital Data Standards, of Chapter 1, Rules of Practice and Procedure, were recodified as N.J.A.C. 7:1D, and renamed General Practice and Procedure by administrative change. See: 32 N.J.R. 1796(a).

Pursuant to Executive Order No. 66(1978), Chapter 1D, General Practice and Procedure, was readopted as R.2000 d.353, effective July 31, 2000. See: 32 N.J.R. 1892(a), 32 N.J.R. 3090(b).

Subchapter 5, Extension of Comment Period and Public Hearings on Proposed Rules; Notice of Proposal and Quarterly Rulemaking Calendar, was adopted as R.2002 d.355, effective November 4, 2002. See: 34 N.J.R. 2386(a), 34 N.J.R. 3818(a).

Chapter 1D, General Practice and Procedure, was readopted as R.2006 d.41, effective December 22, 2005. See: 37 N.J.R. 3111(a), 38 N.J.R. 490(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1D, General Practice and Procedure, was scheduled to expire on June 20, 2013. See: 43 N.J.R. 1203(a).

Chapter 1D, General Practice and Procedure, was readopted as R.2011 d.210, effective July 8, 2011. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. PETITIONS FOR RULES

7:1D-1.1 Procedure to petition for a rule

(a) Unless otherwise provided in Title 7 of the New Jersey Administrative Code, this section shall constitute the Department of Environmental Protection's rules regarding the disposition of all requests for rulemaking pursuant to N.J.S.A. 52:14B-4(f).

(b) Any interested person may petition the Department of Environmental Protection to promulgate, amend or repeal any rule of the Department of Environmental Protection. Such petition must be in writing, signed by the petitioner, and must state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested. The petitioner may provide the text of the requested proposed rule;
3. The reasons for the request;
4. The petitioner's interest in the request, including any relevant organization affiliation or economic interest;
5. The statutory authority under which the Department of Environmental Protection may take the requested action; and
6. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

(c) Petitions for the promulgation, amendment or repeal of a rule by the Department of Environmental Protection shall be addressed to:

Office of Legal Affairs
 Attention: Rulemaking Petitions
 Department of Environmental Protection
 Mail code 401-04L
 401 East State Street, 4th Floor
 PO Box 402
 Trenton, New Jersey 08625-0402

(d) Any document submitted to the Department of Environmental Protection that is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further agency action.

(e) Upon receipt by the Department of a petition for rulemaking, the following shall occur:

1. The petition shall be dated, stamped and logged;
2. The petition shall be referred to the relevant Department division or other Department office, as appropriate; and
3. A notice of petition shall be prepared and filed within 15 days of receipt with the Office of Administrative Law in accordance with N.J.A.C. 1:30-4.1(c).

(f) In accordance with N.J.A.C. 1:30-4.2(a), within 60 days following receipt of a petition, the Department shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice describing the Department's action on the petition in accordance with (g) below.

(g) In accordance with N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.2(a), the Department shall take one of the following actions on the petition:

1. Deny the petition, in which case the notice of action shall explain the reasons for the denial;
2. Grant the petition and initiate rulemaking within 90 days of granting the petition; or
3. Refer the matter for further deliberations. The Department shall conclude its further deliberations within 90 days of the referral. Upon conclusion of such further deliberations, the Department shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate rulemaking within 90 days of granting the petition. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

(h) In accordance with N.J.A.C. 1:30-4.2(b), a specific period of more than 90 days for further deliberations under (g)3 above and/or to initiate a rulemaking proceeding under (g)2 or 3 above may be agreed upon, in writing, by the petitioner and the Department. An agreement to extend either period or both periods shall constitute an action on the petition for which notice shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

New Rule, R.1989 d.419, effective August 7, 1989.

See: 21 N.J.R. 102(a), 21 N.J.R. 2302(a).

Notice of Action of Petition for Safe Drinking Water Act regulations.

See: 22 N.J.R. 2364(c).

Amended by R.2000 d.353, effective August 21, 2000.

See: 32 N.J.R. 1892(a), 32 N.J.R. 3090(b).

In (c), changed name and address.

Amended by R.2002 d.355, effective November 4, 2002.

See: 34 N.J.R. 2386(a), 34 N.J.R. 3818(a).

Rewrote (b)2; in (e)3, substituted "accordance" for "compliance" and amended the N.J.A.C. reference; rewrote (f) and (g).

Amended by R.2011 d.210, effective August 1, 2011.

See: 43 N.J.R. 249(a), 43 N.J.R. 1864(a).

In the address in (c), inserted "Mail code 401-04L" and "401 East State Street, 4th Floor"; and added (h).

SUBCHAPTER 2. DEPARTMENT, SUSPENSION AND DISQUALIFICATION FROM DEPARTMENT CONTRACTING

7:1D-2.1 Definitions

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

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

(e) Reasonable suspicion of the existence of a cause described in section 2(a)1 through 7 of this subchapter may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

(f) A suspension invoked by another department or agency in the executive branch for any of the causes described in section 2 of this subchapter may be the basis for the imposition of a concurrent suspension by the commissioner without the necessity of an approval therefor by the Attorney General.

7:1D-2.7 Procedures, period and scope of suspension

(a) When the commissioner suspends a person or his affiliates from department contracting, the person or persons suspended shall be furnished with a written notice that within ten days after the effective date of the suspension stating that:

1. A suspension has been imposed and its effective date;
2. The reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;
3. The suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and
4. If legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth the position of the commissioner regarding the continuation of the suspension;
5. Where a suspension by another department or agency in the executive branch has been the basis for suspension by the commissioner, he shall note that fact as a reason for his suspension.

(b) A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

(c) A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance or an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was

effectuated by him with the knowledge or approval of such person.

(d) A request for a hearing under (a) above shall be filed with the Department at the following address:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
Mail code 401-04L
401 East State Street, 4th Floor
PO Box 402
Trenton, New Jersey 08625-0402

Administrative change to (d).

See: 23 N.J.R. 3325(b).

Amended by R.2000 d.353, effective August 21, 2000.

See: 32 N.J.R. 1892(a), 32 N.J.R. 3090(b).

Amended by R.2011 d.210, effective August 1, 2011.

See: 43 N.J.R. 249(a), 43 N.J.R. 1864(a).

In the address in (d), inserted "Mail code 401-04L" and "4th Floor".

7:1D-2.8 Applicability

The rules contained herein governing debarment or suspension shall be applicable to existing practices and procedures of the department and all agencies within the control or jurisdiction of the department, under laws that concern prequalification for State contracting to the extent that such practices and procedures may concern the disqualification of any person from State contracting.

7:1D-2.9 Exclusions

Any exclusion from department contracting under these rules by virtue of debarment, suspension or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the department; provided, however, if the commissioner determines that it is essential to the public interest and files a finding thereof with the Attorney General, the commissioner may grant an exception from total exclusion with respect to a particular contract.

7:1D-2.10 Notice

Insofar as practicable, prior notice shall be given by the commissioner to the Attorney General and the Treasurer of any proposed debarment or suspension under these rules.

7:1D-2.11 Lists

The department shall provide the State Treasurer with the names of all persons suspended or debarred and the effective date and term thereof, if any.

7:1D-2.12 Discretion

Nothing required by these rules shall be construed to limit the authority of the commissioner or any agency within the control or jurisdiction of the department to refrain from contracting within the discretion allowed by law.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 5. EXTENSION OF COMMENT PERIOD
AND PUBLIC HEARINGS ON PROPOSED RULES;
NOTICE OF PROPOSAL AND QUARTERLY
RULEMAKING CALENDAR**7:1D-5.1 Extension of comment period on a proposed rule**

(a) The Department may extend the public comment period on a proposed rule whenever the Commissioner determines an extension is appropriate.

(b) The Department shall extend the public comment period on a proposed rule for an additional 30 days when sufficient public interest is demonstrated in accordance with (c) below.

(c) Sufficient public interest is demonstrated when, based on written request(s) for an extension or on the comments received within the 30-day period following publication of the proposal in the New Jersey Register:

1. The Department is satisfied that one of the criteria in (c) i or ii below is met;

i. The proposed rule is complex and/or involves significant amendment(s) to a regulatory program; or

ii. The request(s) to extend the comment period encompasses a broad range of interests;

2. The Department determines that extension of the comment period is likely to result in the Department receiving comments relevant to the proposed rule that raise issues or provide new information, data or findings that were not previously raised or provided during the development of the proposed rule or during the initial comment period; and

3. The Department determines that the delay in the rulemaking process resulting from an extension of the public comment period is not likely to result in an adverse impact(s) to the public health, safety or welfare or the environment.

7:1D-5.2 Public hearing on a proposed rule

(a) The Department may conduct a public hearing on a proposed rule whenever the Commissioner determines that conducting a public hearing is appropriate.

(b) The Department shall conduct a public hearing on a proposed rule if required by statute.

(c) The Department shall conduct a public hearing on a proposed rule if, in accordance with N.J.S.A. 52:14B-4(a)(3), within 30 days following publication of the proposed rule in the New Jersey Register:

1. A public hearing is requested by a committee of the Legislature;

2. A public hearing is requested by a governmental agency or subdivision; or

3. Sufficient public interest in a public hearing is demonstrated in accordance with (d) below.

(d) Sufficient public interest is demonstrated when, based on written request(s) for a public hearing or on the comments received within the 30-day period following publication of the proposal in the New Jersey Register:

1. The Department is satisfied that at least one of the criteria in (d) i through iii below is met;

i. The proposed rule is complex and/or involves significant amendment(s) to a regulatory program;

ii. The request(s) for the Department to conduct a public hearing encompasses a broad range of interests; or

iii. Notice of a public hearing was not included in the notice of proposal or in any subsequent notice during the 30-day period;

2. The Department determines that conducting a public hearing is likely to result in the Department receiving comments relevant to the proposed rule that raise issues or provide new information, data or findings that were not previously raised or provided during the development of the proposed rule or during the initial comment period; and

3. The Department determines that delay in the rulemaking process resulting from conducting a public hearing is not likely to result in an adverse impact(s) to the public health, safety or welfare or the environment.

7:1D-5.3 Notice of proposed rule

(a) The Department shall provide the following types of public notice for all of its rule proposals:

1. Publication of the proposal in the New Jersey Register;

2. Posting of a notice or statement of the substance of the proposed rule on the Department's website at www.state.nj.us/dep;

3. Distribution of a notice or statement of the substance of the proposed rule to the news media maintaining a press office in the State House Complex; and

4. Distribution of a notice or statement of the substance of the proposed rule to those persons who made timely request to the Department for notice of its rulemakings.

(b) In addition to the notice provided in accordance with (a) above, the Department shall distribute by electronic mail a notice of each Department rule proposal to a distribution list that the Department maintains to communicate regarding

rulemaking with the regulated community and interested parties, including environmental organizations, permittees, trade organizations and other interest groups and individuals.

(c) In addition to the notice provided in accordance with (a) and (b) above, the Department may provide public notice of a rule proposal using one of the following methods:

1. Mailing to a distribution list, maintained by the Department program primarily responsible for administering the proposed rule, of individuals, entities, organizations or government entities, that have expressed an interest in receiving information regarding the proposed rule;

2. Posting in central locations or other areas in State managed lands where persons that may be interested in or affected by the proposed rule are likely to see the notice;

3. Publication in a newsletter or trade, industry, government or professional publication whose distribution list includes persons most likely to be affected by or interested in the proposed rule;

4. Distribution at regularly scheduled meetings of advisory groups or councils whose members are most likely to be affected by or interested in the proposed rule; or

5. Publication in at least one newspaper of general circulation having a distribution area sufficient to inform those persons most likely to be affected by or interested in the proposed rule.

Amended by R.2011 d.210, effective August 1, 2011.

See: 43 N.J.R. 249(a), 43 N.J.R. 1864(a).

Rewrote (b); in (c)3, deleted "or" from the end; in (c)4, substituted "or" for a period at the end; and added (c)5.

7:1D-5.4 Notice of rulemaking calendar

(a) The Department shall provide notice of its rulemaking calendar pursuant to N.J.S.A. 52:14B-3 as follows:

1. Publication in the New Jersey Register;