

TITLE 1

OFFICE OF ADMINISTRATIVE LAW

CHAPTER 1

UNIFORM ADMINISTRATIVE PROCEDURE RULES

Authority

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.2002 d.198, effective May 30, 2002.
See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).

Chapter Expiration Date

Chapter 1, Uniform Administrative Procedure Rules, expires on May 30, 2007.

Chapter Historical Note

Chapter 1, Uniform Administrative Procedure Rules of Practice, was adopted as R.1980 d.275, effective July 1, 1980, repealing the administrative hearing rules of the Division of Administrative Procedure at N.J.A.C. 15:15-10. See: 11 N.J.R. 479(a), 12 N.J.R. 234(a), 12 N.J.R. 362(a). Chapter 1 was amended by R.1981 d.55, effective February 17, 1981. See: 13 N.J.R. 3(b), 13 N.J.R. 114(a); R.1981 d.116, effective May 7, 1981. See: 13 N.J.R. 2(a), 13 N.J.R. 254(b); R.1981 d.443, effective November 16, 1981. See: 13 N.J.R. 254(c), 13 N.J.R. 842(a); R.1982 d.87, effective April 5, 1982. See: 14 N.J.R. 2(a), 14 N.J.R. 335(a); R.1982 d.150, effective May 17, 1982. See: 14 N.J.R. 4(a), 14 N.J.R. 471(a); R.1982 d.295, effective September 7, 1982. See: 14 N.J.R. 606(b), 14 N.J.R. 975(b); R.1982 d.467, effective January 3, 1983. See: 14 N.J.R. 486(a), 15 N.J.R. 23(a); R.1983 d.268, effective July 5, 1983. See: 15 N.J.R. 582(a), 15 N.J.R. 1093(a); R.1983 d.515, effective November 21, 1983. See: 15 N.J.R. 1399(a), 15 N.J.R. 1939(a); R.1983 d.550, effective December 5, 1983. See: 15 N.J.R. 1400(b), 15 N.J.R. 2032(a); R.1984 d.368, effective September 4, 1984. See: 16 N.J.R. 1413(a), 16 N.J.R. 2354(a); R.1984 d.445, effective October 1, 1984. See: 16 N.J.R. 1636(a), 16 N.J.R. 2518(a); R.1984 d.476, effective October 15, 1984 (operative November 14, 1984). See: 16 N.J.R. 1408(a), 16 N.J.R. 2777(a); R.1984 d.490, effective November 5, 1984. See: 16 N.J.R. 2320(a), 16 N.J.R. 3004(a); R.1984 d.587, effective December 7, 1984. See: 16 N.J.R. 2710(a), 16 N.J.R. 3426(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Uniform Administrative Procedure Rules of Practice, was readopted as R.1985 d.292, effective May 15, 1985. See: 17 N.J.R. 2(a), 17 N.J.R. 1403(a). Chapter 1 was amended by R.1985 d.368, effective July 15, 1985. See: 17 N.J.R. 1008(a), 17 N.J.R. 1754(a); R.1985 d.508, effective October 7, 1985. See: 17 N.J.R. 1820(a), 17 N.J.R. 2457(b); R.1986 d.79, effective April 7, 1986. See: 18 N.J.R. 130(a), 18 N.J.R. 634(a); R.1986 d.340, effective August 18, 1986. See: 18 N.J.R. 2(a), 18 N.J.R. 1699(a); R.1986 d.468, effective December 1, 1986. See: 18 N.J.R. 1020(a), 18 N.J.R. 1865(a), 18 N.J.R. 2381(a).

Chapter 1, Uniform Administrative Procedure Rules of Practice, was repealed and a new Chapter 1, Uniform Administrative Procedure Rules, was adopted by R.1987 d.200, effective May 4, 1987 (operative July 1, 1987). See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Uniform Administrative Procedure Rules, was readopted as R.1992 d.213, effective April 21, 1992. See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Pursuant to Executive Order No. 66(1978), Chapter 1, Uniform Administrative Procedure Rules, was readopted as R.1997 d.158, effective March 10, 1997. See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

Chapter 1, Uniform Administrative Procedure Rules, was readopted as R.2002 d.198, effective May 30, 2002. See: Source and Effective Date. See, also, section annotations.

Cross References

Apparel industry registration, confiscation of apparel and equipment, requests for formal hearings, see N.J.A.C. 12:210-1.9.

Motorized wheelchair dispute resolution, notification and scheduling of contested case hearings, see N.J.A.C. 13:45A-26E6.

Small, minority and female businesses, State contracts, contested case hearings as under this section, see N.J.A.C. 12A:10-2.2.

Law Review and Journal Commentaries

Administrative adjudications in New Jersey: Why not let the ALJ decide? Richard M. Hluchan, 180 N.J.Law. 28 (Mag.) (Oct./Nov. 1996).

Appeals and enforcement of agency decisions: Confessions of a general counsel. Robert E. Anderson, 180 N.J.Law. 25 (Mag.) (Oct./Nov. 1996).

Approaching hearsay at administrative hearings: Hearsay evidence and the Residuum Rule. Joseph R. Morano, 180 N.J.Law. 22 (Mag.) (Oct./Nov. 1996).

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

Right to a hearing: Statutory rights, constitutional rights and "fundamental fairness". Robert H. Stoloff, 180 N.J.Law. 14 (Mag.) (Oct./Nov. 1996).

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SUBCHAPTER 1. APPLICABILITY, SCOPE, CITATION OF RULES, CONSTRUCTION AND RELAXATION; COMPUTATION OF TIME

1:1-1.1 Applicability; scope; special hearing rules

(a) Subject to any superseding Federal or State law, this chapter shall govern the procedural aspects pertaining to transmission, the conduct of the hearing and the rendering of the initial and final decisions in all contested cases in the Executive Branch of the State Government. N.J.S.A. 52:14F-5. This chapter governs the procedure whether the contested case is before the Office of Administrative Law, an agency head or any other administrative agency. Subchapter 21 governs the conduct of certain uncontested cases handled by the Office of Administrative Law under N.J.S.A. 52:14F-5(o).

(b) In the event of conflict between this chapter and any other agency rule, except agency rules which incorporate statutory requirements, this chapter shall prevail. Procedural rules formerly adopted by the agencies, including those adopted prior to the creation of the Office of Administrative Law, shall continue to apply to the extent they are not inconsistent with this chapter, with statutory requirements or with constitutional standards.

(c) No agency other than the Office of Administrative Law may hereafter propose any rules to regulate the conduct of contested cases and the rendering of administrative adjudications. N.J.S.A. 52:14F5(e). Specific pleading and other pre-transmittal requirements may be regulated by the agencies provided they are consistent with this chapter.

(d) In addition to those rules that specifically govern a transmitting agency's responsibilities and the jurisdiction of the Office of Administrative Law, the following Uniform Administrative Procedure rules are not intended to apply to contested cases heard in agencies exempt under N.J.S.A. 52:14F-8:

1. N.J.A.C. 1:1-11.1(c) (Subpoena forms);
2. N.J.A.C. 1:1-12.6 (Emergency relief);
3. N.J.A.C. 1:1-14.10 (Interlocutory review);
4. N.J.A.C. 1:1-16.2(b) and (c) (Time of motion to intervene);
5. N.J.A.C. 1:1-18.8 (Extensions of time limits for decisions and exceptions); and
6. N.J.A.C. 1:1-21 (Uncontested cases).

(e) This chapter is subject to special hearing rules applicable to particular agencies. Such rules may be adopted by the Office of Administrative Law after consultation with a transmitting agency or at the request of a transmitting agency when the transmitted cases involve unique hearing requirements that are not addressed by this chapter. Where required by Federal law, special hearing rules may be promulgated by a transmitting agency with the concurrence of the Office of Administrative Law.

Cross References

Women-owned and minority-owned businesses, false information supplied, contested case hearing as under this subchapter, see N.J.A.C. 12A:11-1.9.

Case Notes

Disciplinary hearings by the Board are authorized by the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq., and are governed by the New Jersey Uniform Administrative Rules. *Deck House, Inc. v. New Jersey State Bd. of Architects*, 531 F.Supp. 633 (D.N.J.1982).

Administrative agency cannot expand reach of statute. *Rutgers University Legislative Affairs Council, Inc. v. Thompson*, 12 N.J.Tax 642 (1992).

An administrative law judge is not automatically bound by an agency party's argument. This would frustrate the legislative intent of N.J.S.A.

52:14F-1 et seq. which tasked the OAL with providing due process hearings independently and impartially. *Div. of Motor Vehicles v. Canova*, 1 N.J.A.R. 7 (1980).

1:1-1.2 Citation of rules

This chapter shall be referred to as the "New Jersey Uniform Administrative Procedure Rules" and may be cited as, for example, N.J.A.C. 1:1-1.2.

1:1-1.3 Construction and relaxation

(a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practices and class action designations may not be applied unless such procedures are specifically statutorily authorized in administrative hearings.

(b) Except as stated in (c) below, procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice. The judge shall make such determinations and state the reasons for doing so on the record.

(c) The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

Amended by R.1992 d.213, effective May 18, 1992.
See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).
Revised (a).

Case Notes

Conduct of contested case hearing under former rulemaking regulations. *Bally Manufacturing Corp. v. New Jersey Casino Control Commission*, 85 N.J. 325, 426 A.2d 1000 (1981) appeal dismissed 102 S.Ct. 77, 454 U.S. 804, 70 L.Ed.2d 74.

Definitions of adjudication and contested case under former rulemaking regulation; conduct of hearings. In re *Matter of Public Hearings*, 142 N.J.Super. 136, 361 A.2d 30 (App.Div.1976), certification denied 72 N.J. 457, 371 A.2d 62 (1976).

Administrative law judge was without jurisdiction to compel joinder of third party in school district's placement dispute with parents. *B.R. v. Woodbridge Board*, 95 N.J.A.R.2d (EDS) 159.

Requests for adjournment granted as petitioner had retained counsel and needed time to conduct discovery and prepare appropriately for trial. Request was granted in order to secure a just determination and to avoid unfairness to the pro se complainant. *White v. Public Service*, 8 N.J.A.R. 335 (1984), approved Docket No. A-1496-84 (App.Div. 1986).

Standard for reopening case has not been set forth by statute or rule. In the absence of standards, N.J.A.C. 1:1-1.3(a) states judge may proceed in any manner compatible with the purposes of administrative adjudication. In Re: *White Bus Co.*, 6 N.J.A.R. 535 (1983).

Section incorporates generally into the uniform administrative rules only those portions of the court rules which govern the conduct of lawyers, judges, and agency personnel (cited former rule, N.J.A.C. 1:1-3.8). *Div. of Motor Vehicles v. Festa*, 6 N.J.A.R. 173 (1982).

1:1-1.4 Computation of time

In computing any period of time fixed by rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. In computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

1:1-1.5 Conduct of administrative law judges

The Code of Judicial Conduct for Administrative Law Judges, as incorporated herein by reference as the chapter Appendix, shall govern the conduct of administrative law judges.

New Rule, R.1992 d.430, effective November 2, 1992.
See: 24 N.J.R. 2755(a), 24 N.J.R. 4028(a).
Amended by R.2002 d.198, effective July 1, 2002.
See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).

SUBCHAPTER 2. DEFINITIONS

1:1-2.1 Definitions

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

"Adjournment" means postponement of the hearing until another time.

"Administrative law judge" means a person appointed pursuant to N.J.S.A. 52:14F-4 or N.J.S.A. 52:14F-5(m) and assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings.

"Administrative rule" means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. N.J.S.A. 52:14B-2(e).

"Affidavit" means a written statement that is signed and sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation.