

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.

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 rule-making 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 rulemaking.

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".

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 Form and content of notice of proposal

(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 proposal 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; and

7. A regulatory flexibility analysis or statement.

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.