

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.1996 d.79, effective January 16, 1996.  
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

Executive Order No. 66(1978) Expiration Date

Chapter 30, Rules for Agency Rulemaking, expires on January 16, 2001.

Chapter Historical Note

Chapter 30, Rules for Agency Rulemaking, was originally codified at N.J.A.C. 15:15, as Rules of Administrative Procedure. With the enactment of P.L. 1981 c.27 on February 9, 1981, effective March 11, 1981, which made significant changes to the Administrative Procedure Act (APA), N.J.A.C. 15:15 was substantially amended and recodified as N.J.A.C. 1:30, Rules For Agency Rulemaking. The new N.J.A.C. 1:30 was filed as an emergency rule pursuant to the APA prior to the enactment of P.L. 1981 c.27. Under the prior version of the APA, an emergency rule was effective upon filing and was not required to be adopted. N.J.A.C. 1:30 was therefore filed and effective as an emergency adoption on March 6, 1981 operative March 11, 1981 as R.1981 d.83. See: 13 N.J.R. 171(a), 13 N.J.R. 255(d).

The amendments to Chapter 30 were designed to: (1) adjust the rules to implement the new rulemaking provisions of the APA; (2) adjust the rules to correspond with the establishment of the OAL and to related changes in the enforcement of the APA; (3) crystallize with greater clarity and precision some of the notice and hearing requirements of the APA; and (4) consolidate various provisions and repeal certain rules which repeated statutory language.

After one year of operation under P.L. 1981 c.27, Chapter 30 was substantially amended to address several comments and criticisms while operating under the new statutory requirements 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). The amendments included language and technical changes; new definitions; clarified the effective date of an adopted rule; outlined compliance procedures for Executive Order No. 66(1978); specified the types of changes which could be made to a proposed rule upon adoption; changed rulemaking retention records from two to three years; provided for administrative correction of rules and required that proposed and adopted rules be signed by a duly authorized person.

Chapter 30 was readopted pursuant to Executive Order No. 66(1978) effective February 14, 1986 with amendments effective March 3, 1986 as R.1986 d.60. 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 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 was readopted as R.1996 d.79, effective January 16, 1996. See: Source and Effective Date. See, also, section annotations.

Law Review Commentaries

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

SUBCHAPTER 3. PROPOSAL PROCEDURE

- 1:30-3.1 Notice of proposed rule
- 1:30-3.2 Informal public input; notice of pre-proposal for a rule
- 1:30-3.3 Opportunity to be heard
- 1:30-3.3A Public hearings
- 1:30-3.4 Rulemaking record
- 1:30-3.5 Negotiating a rule
- 1:30-3.6 Notice of petition for a rule
- 1:30-3.7 Federally required rule

SUBCHAPTER 4. PROCEDURE UPON ADOPTION

- 1:30-4.1 Notice of adopted rule
- 1:30-4.2 Time for filing adopted rule
- 1:30-4.3 Variance between the rule as proposed and as adopted
- 1:30-4.4 Executive Order No. 66(1978); expiration date for adopted rule
- 1:30-4.5 Emergency rule adoption and concurrent proposal
- 1:30-4.6 Effective date and promulgation of adopted rule
- 1:30-4.7 Timely filing of notice of adoption

SUBCHAPTER 1. GENERAL PROVISIONS

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 Surcharge, 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; intra-LATA competition on an industrywide 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 of 1968, P.L. 1968, c.410, as amended and supplemented by P.L. 1978, c.67 and all other amendments and supplements thereto.

"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 adopt a rule which modifies, alters, revises or suspends 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. 1:30-4.5).

"Executive Order No. 66(1978)" means the 66th executive order issued by Governor Byrne in 1978. Commonly referred to as the "Sunset" provision, the executive order requires the establishment of an expiration date for a promulgated rule which is not later than five years from the rule's effective date.

"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 Executive Order 66(1978), 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.

"Negotiating a rule" means the process whereby an agency requests, and the OAL provides a representative to conduct a preliminary, non-adversarial proceeding with respect to a contemplated rulemaking proceeding, and which results in a rule presented to the "adopting agency" head in the form required by N.J.A.C. 1:30-3.1.

"Notice of petition for a rule" means that document described in N.J.A.C. 1:30-3.6 which must be submitted to the Office of Administrative Law for publication in the Register when a request for agency rulemaking action is made by an interested person, pursuant to N.J.S.A. 52:14B-4(f).

"Notice of pre-proposal for a rule" means that document described in N.J.A.C. 1:30-3.2 which must be submitted to the Office of Administrative Law for publication in the New Jersey Register, when an agency determines to conduct, pursuant to N.J.S.A. 52:14B-4(e), a preliminary proceeding with respect to a contemplated rulemaking proceeding or when, pursuant to N.J.A.C. 1:30-3.2, a pre-proposal shall be submitted.

"Notice of proposed rule" means that document described in N.J.A.C. 1:30-3.1 which must be submitted to the Office of Administrative Law for filing and then publication in the New Jersey Register and distribution to the Legislature and interested persons.

"Operative" means that the adopting agency shall enforce and the affected public shall obey the terms of an effective rule. Unless otherwise specified in the rule, a rule becomes operative when effective.

"Organizational rule" means a rule promulgated pursuant to N.J.S.A. 52:14B-3(l), including a description of the structure of the agency; the persons from whom and places from which information, applications and other forms may be obtained; and the persons to whom and places to which applications, requests and other submissions may be made.

"Person" means any natural individual, association, board, venture, partnership, corporation, organization, institution and governmental instrumentality recognized by law for any purpose whatsoever.

"Pre-proposal" means a preliminary proceeding for the purpose of eliciting ideas, views and comments of interested persons on a contemplated rulemaking proceeding, pursuant to N.J.A.C. 1:30-3.2(b). This preliminary proceeding precedes the filing of a formal rule proposal.

"Promulgate" means to proclaim officially in the Register and thereby render effective a new rule, amendment or repeal which was duly adopted by an agency and filed with the Office of Administrative Law.

"Propose" means the action whereby an adopting agency submits a notice of proposed rule to the Office of Administrative Law for filing and publication by the Director.

"Public hearing" means a legislative type proceeding conducted either as part of a rulemaking or to consider a possible rulemaking which affords the public an opportunity to present to the promulgating agency oral and written comments, arguments, data and views on the rulemaking or the contemplated rulemaking.

"Readopt" means to conduct a rulemaking proceeding for the purpose of continuing in effect an emergency rule which would otherwise expire pursuant to N.J.S.A. 52:14B-4(c) (see N.J.A.C. 1:30-4.5), or a rule which expires pursuant to the "sunset" provisions of Executive Order No. 66(1978) (see N.J.A.C. 1:30-4.4). In a rulemaking proceeding to readopt a rule, the rule continues in effect upon the timely filing of the notice of adoption with the Office of Administrative Law.

"Register" means the "New Jersey Register" published pursuant to N.J.S.A. 52:14B-7(b).

"Registry" means the serial list of documents submitted for filing with the Director.

"Repeal" means to conduct a rulemaking proceeding to declare void a rule, the effect of which is to terminate the legal effect of such rule prospectively only. Any rule so terminated shall continue thereafter to be enforced in and applied to all proceedings, formal or otherwise, initiated pursuant to rule or to law prior to the effective date of such repeal.

"Rule" or "administrative rule" is defined in N.J.S.A. 52:14B-2(e). For purposes of determining effective dates, there are five types of rules: new rules, amendments, repeals, readoptions, and emergency rules.

"Rule activity" means any agency action with respect to a rule authorized or required by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and including a petition for a rule, a pre-proposal for a rule, and rulemaking proceeding.

"Rulemaking proceeding" means those steps which shall be followed pursuant to the Act and this chapter, for a rule to be validly promulgated, and which include the procedures for proposal of a rule, N.J.A.C. 1:30-3.1 et seq., the proper adoption of a rule, and the procedures upon adoption of a rule, N.J.A.C. 1:30-4.1 et seq.

Amended by 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).

Added definition "Appendix".

Amended by R.1991 d.85, effective February 19, 1991.

See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Added "Administrative correction . . .", "Emergency adoption", "Executive Order No. 66(1978)", "Intra-agency statement", "Inter-agency statement", "Public hearing", and "Regulatory material".

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

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

Deleted "Administrative Rules and Publications" and added "Division of Administrative Rules".

#### Case Notes

Department of health's rules and regulations were void for not having been promulgated in accordance with Administrative Procedures Act. *State v. Leary*, 232 N.J.Super. 358, 556 A.2d 1328 (L.1989).

### 1:30-1.3 Offices

(a) The Division of Administrative Rules, Office of Administrative Law, is located at Quakerbridge Plaza, Building No. 9, CN 049, Quakerbridge Road, Trenton, New Jersey 08625.

(b) Hours during which documents may be submitted or reviewed are from 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

(c) Information may be obtained by telephoning the following for:

1. Rulemaking information (609) 588-6614;
2. Document filings (609) 588-6613 or 6606; and
3. Administrative Code research (609) 588-6613 or 6606.

Amended by R.1991 d.85, effective February 19, 1991.

See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Added (c).

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

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

### 1:30-1.4 Citations to the Code

(a) The New Jersey Administrative Code shall be cited as "N.J.A.C."

(b) The citation of a particular section of the New Jersey Administrative Code shall include the numerical designations of the title, chapter, subchapter and section referred to, preceded by the initials N.J.A.C. As an example, this section would be cited as N.J.A.C. 1:30-1.4.

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

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

### 1:30-1.5 Citations to the Register

(a) The New Jersey Register shall be cited as "N.J.R."

(b) The citation to material appearing in the New Jersey Register shall include the volume number, page number and item letter, the volume and page numbers being separated by the initials, "N.J.R." As an example, the second item of page 20 of the January 3, 1995 issue would be cited as 27 N.J.R. 20(b).

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

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

### 1:30-1.6 Statutory citations in the Code

Statutory citations will be "N.J.S.A.", the New Jersey Statutes Annotated. This is for the convenience of the public, but the official copy of any statute will be found in the State's unpublished compilation of statutes or in the published yearly pamphlet laws.

### 1:30-1.7 Use of headings

Title, subtitle, chapter, subchapter, section, article, group, part and division headings contained in the Register or Code are not part of the rule, but are intrinsic parts of the publication. As such, these headings may be used in interpreting the rule.

### 1:30-1.8 Access to documents

(a) Every document or a copy thereof submitted to the Office of Administrative Law for filing shall be maintained on record by the Division of Administrative Rules.

(b) Any person shall, upon request, be afforded an opportunity to examine any document maintained by the Division of Administrative Rules during business hours 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

Amended by R.1991 d.85, effective February 19, 1991.

See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Added Division name and business hours.

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

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

### 1:30-1.9 Copies of documents; fees

(a) Any person may obtain copies of filed documents from the Division of Administrative Rules pursuant to the provisions of N.J.S.A. 47:1A-2 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;
3. All pages over 20: \$.25 per page.

(b) Original filed documents shall not be released from the custody of the Office of Administrative Law.

Amended by R.1991 d.85, effective February 19, 1991.

See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Added (a)1-3.

Amended by R.1995 d.561, effective November 6, 1995.

See: 27 N.J.R. 416(a), 27 N.J.R. 4279(a).

Increased fees in (a).

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

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

### 1:30-1.10 Forms

From time to time the Office of Administrative Law may adopt as interagency statements the forms and formats which shall be used in rule activities.

(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).

## SUBCHAPTER 3. PROPOSAL PROCEDURE

### 1:30-3.1 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 proposed rule" and submit the notice to the OAL. The notice of proposed rule shall comply with the requirements of this section.

(b) The notice of proposed rule shall include a suggested N.J.A.C. citation for any proposed new rule and shall include the existing citation for any amendment, repeal or readoption.

(c) The notice of proposed rule shall include 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.

(d) The notice of proposed rule shall include a citation to the specific N.J.S.A. statutory authority for the proposed rule 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.

(e) The notice of proposed rule shall include an announcement of the public's opportunity to be heard regarding the proposed rule, which shall include:

1. When, where, and how persons may present their views orally or in writing;
2. When and where persons may attend any formal rule adoption proceeding; and
3. The name, address and, if oral comments are requested, telephone number of the person(s) to receive written or oral comments.

(f) The notice of proposed rule shall include a brief statement of the proposed rule, which shall include:

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 therefor.
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 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.

(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 (f)4iv 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.

5. (Reserved)

6. 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.



(g) The notice of proposed rule 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 renumbered.

(h) Upon OAL's receipt of the proposal notice which conforms to these requirements:

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

3. The agency shall mail either the notice of proposed rule, 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; and

4. 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:

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.

iii. The additional method of publicity shall be provided at least 30 days prior to the close of the public comment period.

(i) Any proposal notice which does not meet the requirements in (c) through (g), (h)3 or (h)4 above 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).

#### 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).

#### 1:30-3.2 Informal public input; notice of pre-proposal for a rule

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

(c) The notice of pre-proposal for a rule 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).

### 1:30-3.3 Opportunity to be heard

(a) As part of any proceeding for a pre-proposal under N.J.A.C. 1:30-3.2(b) and (c), or for a proposed rule under N.J.A.C. 1:30-3.1, 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 proposed rule.

(b) Where an agency permits any other method of public comment on a pre-proposal or a proposed rule, 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 pre-proposal or on a proposed rule is scheduled for a time after the 30-day 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) The agency shall consider fully all written and oral submissions concerning the pre-proposal or proposed rule.

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).

### 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).

### 1:30-3.3A Public hearings

(a) A Legislative Committee, a State agency, or a county, local or municipal governmental entity may request that an agency conduct a public hearing on a proposed rulemaking. The party requesting the public hearing shall submit the request to the agency within 15 days following publication of the proposed rule in the Register. The party requesting the public hearing shall also submit a copy of the request to the Office of Administrative Law.

(b) If a public hearing is to be held as part of a proceeding for a pre-proposal or a proposed rule, 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 proposed rule, notice of the public hearing shall be contained in the notice of pre-proposal or proposed rule published in the New Jersey Register.

2. When a public hearing is scheduled after the notice of pre-proposal or proposed rule 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) Any public hearing held pursuant to this section shall be conducted according to the procedures outlined in N.J.S.A. 52:14B-4(g).

(d) In addition to any other publication of results, 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 (d)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.



**1:30-3.7 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 proposed rule a citation for the Federal statute, rule or ruling involved and an explanation of the Federal requirement.

**SUBCHAPTER 4. PROCEDURE UPON ADOPTION**

**1:30-4.1 Notice of adopted rule**

(a) When an agency adopts a proposed rule, the agency shall prepare a "notice of adopted rule" and submit the notice to the OAL. The notice of adopted rule shall comply with the requirements of this section.

(b) The agency shall complete and submit to the OAL a Certificate of Proposal, Adoption and Promulgation (form OAL/APF-1) 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, P.L. 1968, c.410, as amended by P.L. 1978, c.67 and P.L. 1981, c.21, and of this chapter.

(c) The notice of adopted rule shall also contain:

1. The publication date of the notice of proposed rule;
2. The date of adoption, the name of the agency and the name and signature of the adopting agency head or any other person authorized by statute to adopt agency rules;
3. The date the notice of adopted rule is filed with the OAL;
4. The effective date of the rule;
5. The operative date of the rule if later than the date of Register promulgation;
6. The expiration date of the rule pursuant to Executive Order No. 66(1978) or an exemption from the Order with reasons for the exemption;
7. A summary of any changes between the rule as proposed and adopted, and the reasons for the changes;

8. (Reserved)

9. Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, the names of all persons who submitted oral or written comments, arguments, data and views concerning the proposed rule. 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;

10. If appropriate, a summary of hearing officer's recommendations and agency responses pursuant to N.J.A.C. 1:30-3.3A(d)3;

11. 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; and

12. The text of any changes between the rule as proposed and as adopted, specifically indicating additions and deletions.

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).

**Case Notes**

Direction to re-publish rule indicated intent for publication of final rule under former rulemaking. *Livingston v. New Jersey State Bd. of Medical Examiners*, 168 N.J.Super. 259, 402 A.2d 967 (App.Div.1979), certification denied 81 N.J. 406, 408 A.2d 800 (1979).

Validity of rule upheld against challenge based on failure to meet notice requirements of 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).

**1:30-4.2 Time for filing adopted rule**

(a) No adopted rule, other than an emergency rule, organizational rule or a Federally required rule, shall be accepted for filing until either 60 days after the submission of the proposed rule 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. 1:30-3.3(a), whichever is later.

(b) Any adopted rule submitted for filing shall be reviewed by the Office of Administrative Law not more than 10 business days following the receipt of the document by the Office of Administrative Law. Any rule 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 proposed rule was published in the New Jersey Register, the proposal expires. Before the rule can be promulgated, the agency must resubmit the proposal for publication in the Register and must comply again with the notice and opportunity to be heard requirements of the Act.

#### 1:30-4.3 Variance between the rule as proposed and as adopted

(a) Where, following the notice of a proposed rule, 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 proposed rule 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.

#### Case Notes

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.

#### 1:30-4.4 Executive Order No. 66(1978); expiration date for adopted rule

(a) All adoptions filed with the OAL shall include an expiration date of no more than five years from the date of adoption.

(b) Expiration dates shall be fixed at the chapter level. Any amendment to a chapter that has no expiration date shall receive a five year expiration date which shall attach to and pertain to the entire chapter.

(c) No expiration date need be included where:

1. The provisions of the rule are prescribed by Federal or State statute, Federal regulation, or Court ruling, so that the agency exercises no discretion as to whether to promulgate the rule and as to what is prescribed by the rule; or
2. The establishment of an expiration date for the rule is precluded by a preemptive State or Federal statute or Federal regulation, or any preemptive agreement made pursuant to such statute or regulation, so that the agency exercise no discretion as to whether to repeal or to amend the rule; or
3. The Governor has waived the requirement of an expiration date for the rule; and
4. The agency establishes in writing that the rule is exempt from the expiration date requirement.

(d) Once an expiration date is established:

1. That expiration date remains effective, irrespective of any subsequent amendments to the rule, short of a complete repeal or complete repromulgation of the whole chapter.
2. Any amendment to that subchapter shall include the expiration date which has been established for the chapter.

(e) In order to maintain the effectiveness of a rule, the rule must be duly proposed, adopted and filed prior to its expiration date. The readopted rule is effective upon filing with the Office of Administrative Law.

1. The new Executive Order No. 66(1978) expiration date shall be calculated from the date of filing.