

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.2001 d.52, effective January 16, 2001.
See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).

Executive Order No. 66(1978) Expiration Date

Chapter 30, Rules for Agency Rulemaking, expires on January 16, 2006.

Chapter Historical Note

Chapter 30, Rules for Agency Rulemaking, was adopted as emergency new rules by R.1981 d.83, effective March 6, 1981 (operational March 11, 1981). See: 13 N.J.R. 171(a), 13 N.J.R. 255(d).

Chapter 30, Rules for Agency Rulemaking, was extensively revised 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).

Pursuant to Executive Order No. 66(1978), Chapter 30, Rules for Agency Rulemaking, was readopted as R.1986 d.60, effective February 14, 1986. 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, Rules for Agency Rulemaking, 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, Rules for Agency Rulemaking, was readopted as R.1996 d.79, effective January 16, 1996. See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Rules for Agency Rulemaking, was readopted as R.2001 d.52, effective January 16, 2001. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

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

Legislative review of agency rules. Mark D. Schorr, 180 N.J.Law. 30 (Mag.) (Oct./Nov. 1996).

Overturing Environmental Regulations: A Primer on Breaching the Regulatory Walls. John A. McKinney, Jr., J. Wylie Donald, 160 N.J.Law. 48 (Mag.) (April 1994).

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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 industry-wide 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, N.J.S.A. 52:14B-1 et seq.

“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 modify, alter, revise or suspend 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. 1:30-6.5).

“Executive Order No. 27(1994)” means the 27th executive order issued by Governor Whitman in 1994. Commonly referred to as the “Federal standards” provision, the executive order requires a statement or analysis as to whether a rule exceeds standards or requirements imposed by Federal law. Federal law includes statutes, rules, regulations, orders, directives or guidelines.

“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 N.J.S.A. 52:14B-5.1e, 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.

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.

Section was "Executive Order No. 66(1978); expiration".

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).
Sec: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

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".

Case Notes

Agency may adopt emergency regulations without strict notice and comment procedures if it finds an imminent peril to the public health, safety, or welfare requires adoption of a rule. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Parents of disabled students and organizations representing interests of children with disabilities, seeking order requiring the state Department of Education to conduct emergency rule-making to permit promulgation of new special education regulations, failed to demonstrate "imminent peril" to public health or safety required to justify departure from strict notice and comment procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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.

vi. The regulatory flexibility analysis in (c)7iv 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.

(d) The notice of proposal shall include the full text of the proposed new rule, amendment, repeal or re adoption, specifically indicating additions and/or deletions of any rule being repealed or recodified.

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).

Amended by R.1996 d.120, effective April 1, 1996.

See: 27 N.J.R. 414(a), 28 N.J.R. 1823(a).

Added (f)5.

Amended by R.1996 d.575, effective December 16, 1996.

See: 28 N.J.R. 3695(a), 28 N.J.R. 5173(a).

Added (e)4.

Amended by R.1998 d.555, effective November 16, 1998.

See: 30 N.J.R. 3123(a), 30 N.J.R. 4037(a).

In (f), added 7.

Recodified from N.J.A.C. 1:30-3.1(a) through (g) 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.

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).

1:30-5.2 Publication and distribution of notice of proposal

(a) Upon OAL's receipt of a notice of proposal which conforms to the requirements of N.J.A.C. 1:30-5.1:

1. The OAL shall submit, within two business days, 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 proposal in the next available issue of the *New Jersey Register*. Pursuant to N.J.S.A. 52:14B-7(c), any notice of proposal which would be cumbersome, or unduly expensive to publish, shall not be printed in full. Instead, such notices shall be summarized in the *Register*. The proposing agency shall

make available the notice of proposal and provide in the published notice the manner in which, and from where, copies may be obtained;

3. The agency shall mail either the notice of proposal, 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;

4. The agency shall distribute either the notice of proposal, as filed, or a statement of the substance of the proposed action to the news media maintaining a press office in the State House Complex;

5. The agency shall make available electronically on its web site, through the largest nonproprietary cooperative public computer network, either the notice of proposal, as filed, or a statement of the substance of the proposed action; and

6. 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. Each agency shall adopt rules prescribing the manner in which it shall provide additional publicity under this paragraph, which rules shall set forth the circumstances under which each additional method shall be employed.

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.

(b) Additional notice of the proposal under (a)3 through 6 above shall be provided at least 30 days prior to the close of the public comment period.

(c) Any notice of proposal which does not meet the requirements in N.J.A.C. 1:30-5.1 and this section 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).

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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.
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See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).
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In (f), added 7.

Recodified from N.J.A.C. 1:30-3.1(h) through (i) 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.

Case Notes

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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).

1:30-5.3 Informal public input; notice of pre-proposal

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

(c) The notice of pre-proposal 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).
Recodified from N.J.A.C. 1:30-3.2 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).
In (b), deleted "for a rule" following "pre-proposal" and substituted "proposal" for "proposed rule"; in (c), deleted "for a rule".

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See: 33 N.J.R. 915(a), 33 N.J.R. 1927(a).

In (b), deleted "for a rule" following "pre-proposal" and substituted "proposal" for "proposed rule"; in (c), deleted "for a rule".

1:30-5.4 Opportunity to be heard

(a) 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 a notice of proposal.

1. If within 30 days of the publication of a notice of proposal sufficient public interest is demonstrated in an extension of the time for submission of comments, the agency shall provide an additional 30-day period for the receipt of comments by interested parties. The agency shall not adopt the proposed rule until after the end of that 30-day extension.

- i. "Sufficient public interest" for granting an extension of the comment period pursuant to this paragraph shall be determined by the proposing agency based upon definite standards it has adopted as part of its rules of practice required under N.J.S.A. 52:14B-3(2).

(b) Where an agency permits any other method of public comment on a notice of pre-proposal or a notice of proposal, the agency shall provide timely notice of that opportunity in a manner reasonably calculated to reach the interested public.

(b) Any notice of adoption submitted for filing shall be reviewed by the Office of Administrative Law not more than five business days after the submission deadline for notices of adoption for the issue of the New Jersey Register for which the notice was submitted. Any notice of adoption 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 notice of proposal was published in the New Jersey Register, the proposal expires. Before the proposed rule amendment, repeal or re-adoption can be adopted, the agency must resubmit the notice of proposal for publication in the Register and must comply again with the notice and opportunity to be heard requirements of the Act.

Recodified from N.J.A.C. 1:30-4.2 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).

In (a), substituted "notice of adoption" for "adopted rule", substituted "notice of proposal" for "proposed rule" and amended N.J.A.C. reference; rewrote (b) and (c).

1:30-6.3 Variance between the rule as proposed and as adopted

(a) Where, following the notice of proposal, 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 proposal 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.

Recodified from N.J.A.C. 1:30-4.3 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).

In (a), substituted "proposal" for "proposed rule".

Case Notes

Board of Public Utilities was not required to request additional notice and comments after initial rule proposal and comment period with respect to regulations establishing rate caps on alternate operator service (AOS) providers in telecommunications industry, where there were no changes to actual regulations proposed by the Board, and final rules were essentially identical to those proposed by the Board. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Board of Public Utilities' adoption of rate caps on alternate operator service (AOS) providers in telecommunications industry after change in operator service provider's (OSP) rates which Board selected as appropriate benchmark for calls which required intervention of live operator was not arbitrary, capricious, or an abuse of discretion, where the Board stated that it analyzed OSP's increase and was satisfied that caps were still reasonable and met Board's goal of striking a balance between financial integrity of payphone providers and public interest, Board specifically relied on fact that rates for calls which required intervention of a live operator could be increased an additional \$1.00 to \$5.25, and Board concluded that the \$1.00 raise would serve to further mitigate any charges or other costs that might be incurred. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Changes regarding the Board of Public Utilities' assumptions underlying proposed rule did not render Board's adoption of rate caps on alternate operator service (AOS) providers in telecommunications industry arbitrary, capricious, and an abuse of discretion. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

To determine whether re-proposal of rule is required, the court must focus on whether changes in text of rule which occurred after initial publication and before adoption of final rule destroyed value of original notice. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

When material changes in the text of a proposed rule occur after initial publication and before adoption of final rule, agency must issue and publish further notice seeking comments prior to adoption of final version of rule. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

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.

1:30-6.4 Expiration date for adopted rule

(a) Every chapter in the Administrative Code in effect as of January 16, 2001 shall expire on July 1, 2006, unless a different expiration date has been established for the chapter in accordance with (f) below or no expiration date is required pursuant to (c) below. Every chapter adopted or readopted on or after July 1, 2001 shall expire five years after the chapter's effective date, unless a sooner expiration date is established in accordance with (f) below or no expiration date is required pursuant to (c) below. Every chapter first effective from January 17, 2001 through June 30, 2001 shall, pursuant to Executive Order No. 66(1978), expire five years after the chapter's effective date, unless a sooner expiration date is established for the chapter or the chapter is readopted in accordance with (f) below, or no expiration date is required under that Executive Order. All notices of adoption filed with the OAL shall include the expiration date(s) of the rules affected by the adoption.

(b) Expiration dates shall be fixed at the chapter level. An adopted new chapter shall have an expiration date no more than five years from the chapter's effective date.

(c) No expiration date need be included where the adopting agency establishes in writing that the rules in a chapter are exempt from the expiration date requirement under (c)1 or 2 below:

1. The provisions of the rules are prescribed by Federal law, so that the agency exercises no discretion as to whether to promulgate the rules and as to what is prescribed by the rules, in which case the Federal law shall be cited in the notice of adoption; or

2. The expiration of the rules would violate any other Federal or State law, in which case the Federal or State law shall be cited in the notice of adoption.

(d) The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

(e) An expiration date shall remain effective, irrespective of any subsequent amendments to the rules, short of a complete repeal and repromulgation of the whole chapter.

1. Any notice of adoption of an amendment to a chapter shall include the expiration date which has been established for the chapter.

(f) In order to maintain the effectiveness of a chapter of rules, the rules must be duly proposed for re-adoption, adopted and filed prior to the chapter expiration date. Upon the filing of a notice of proposed re-adoption, the expiration date of the subject chapter shall be extended for 180 days, if such notice is filed with the Office of Administrative Law prior to the chapter expiration date. The readopted rules are effective upon filing with the Office of Administrative Law.

1. The new expiration date shall be calculated from the date of filing.

2. Any amendments to readopted rules are effective upon publication of the notice of adoption.

(g) Any re-adoption of rules which is proposed and could be adopted prior to their expiration date under (f) above, but is not filed for adoption with the OAL until after the rules' expiration date, shall be considered new rules which are effective upon publication of the notice of adoption in the Register. The new expiration date shall be calculated from the date of publication.

(h) Any proposed re-adoption of rules which expired before filing of the notice of proposal shall be considered proposed new rules.

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

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

Provided that expiration date be calculated from date of filing.

Recodified from N.J.A.C. 1:30-4.4 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.

1:30-6.5 Emergency rule adoption and concurrent proposal

(a) Any agency adopting an emergency rule pursuant to N.J.S.A. 52:14B-4(c) shall comply with the requirements of the adoption procedure. The documents to be filed for an emergency rule adoption shall include:

1. A Certificate of Proposal, Adoption and Promulgation (form OAL APF-[date]) signed by the agency head adopting the emergency rule;

2. A written summary of the subject matter of the emergency rules, which includes a finding that there is an imminent peril which necessitates emergency proceedings; the basis for the finding; and social and economic factors which bear upon the finding;

3. A signed statement from the Governor concurring as to the existence of an imminent peril which justifies the emergency rulemaking proceeding; and

4. The text of the emergency rule.

(b) An emergency rule is effective upon filing with the OAL.

(c) Upon filing with the Office of Administrative Law, the OAL shall transmit the Certificate of Proposal, Adoption and Promulgation, the Governor's signed statement, and a copy of the emergency rule to the President of the Senate and the Speaker of the General Assembly.

(d) To continue the provisions of an emergency rule beyond the statutory 60-day period of emergency (see N.J.S.A. 52:14B-4(c)), the agency may propose the provisions of the emergency rule in a notice of proposal which is filed with the OAL at the same time that the emergency adoption is filed. The notice of emergency adoption shall state that the rule is being proposed concurrently. The concurrent proposal shall comply with N.J.A.C. 1:30-5.1 and may be adopted after the comment period. The adoption of the concurrent proposal shall be effective upon timely filing of the notice of adoption with the OAL. As used in the preceding sentence, "timely" means on or before the expiration date of the emergency rule. Any changes to the readopted rule shall be effective upon publication of the notice of adoption.

(e) An adoption of a concurrent proposal filed after the expiration of the emergency rule shall be effective upon publication in the Register.

(f) The provisions of an emergency rule shall not be readopted as an emergency rule.

Amended by R.1987 d.346, effective August 17, 1987.
See: 19 N.J.R. 676(a), 19 N.J.R. 1544(a).

Substantially amended.
Amended by R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

Amended by R.2001 d.52, effective February 5, 2001.
See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).
Recodified from N.J.A.C. 1:30-4.5 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).

In (d), inserted "notice of" preceding "proposal", amended N.J.A.C. reference and inserted sentence preceding last sentence.
Administrative correction.
See: 34 N.J.R. 1262(a).

Case Notes

Any defect in using order to establish program which should have been established by rule making was cured by emergency regulation. Matter of Producer Assignment Program, 261 N.J.Super. 292, 618 A.2d 894 (A.D.1993), certification denied 133 N.J. 438, 627 A.2d 1144, certification denied 133 N.J. 439, 627 A.2d 1144.

Emergency regulation was permitted to establish producer assignment program applicable to automobile insurers. Matter of Producer Assignment Program, 261 N.J.Super. 292, 618 A.2d 894 (A.D.1993), certification denied 133 N.J. 438, 627 A.2d 1144, certification denied 133 N.J. 439, 627 A.2d 1144.

Emergency adoption must conform with emergency rule-making procedures of Administrative Procedure Act (APA). Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 258 N.J.Super. 290, 609 A.2d 501 (A.D.1992), certification granted 130 N.J. 398, 614 A.2d 620, affirmed in part, reversed in part 133 N.J. 206, 627 A.2d 614.

Emergency regulations adopted prior to effective date of enabling legislation upheld; remanded for public notice and hearing in interest of justice (citing former rulemaking regulations). New Jersey Assn. of

Health Care Facilities v. Klein, 182 N.J.Super. 252, 440 A.2d 476 (App.Div.1981).

1:30-6.6 Effective date and promulgation of adopted rule

(a) The following rules are effective upon filing with the Office of Administrative Law:

1. Any rule adopted as an emergency rule pursuant to N.J.A.C. 1:30-6.5(b) and (d);
2. Any rule readopted pursuant to N.J.S.A. 52:14B-5.1 (see N.J.A.C. 1:30-6.4(f));
3. Any rule adopted as an organizational rule pursuant to N.J.S.A. 52:14B-4(b); or
4. Any concurrent rule the adoption of which is filed prior to the expiration of the emergency rule.

(b) Any other adopted rule is effective upon publication in the New Jersey Register.

Amended by R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).
Recodified from N.J.A.C. 1:30-4.6 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).
In (a)1, amended N.J.A.C. references; in (a)2, amended N.J.A.C. references and deleted "Executive Order No. 66(1978)" and inserted N.J.S.A. reference; in (b), substituted "publication" for "promulgation".

Case Notes

Public health council could extend effective date of rules regulating smoking in public place as part of the state sanitary code which were invalid due to procedural defect of lack of a hearing, by filing an order with the division of administrative procedure amending its order of adoption and thereby allowing additional time for it to submit a new proposal in a procedurally correct manner. Atty.Gen.F.O.1978, No. 7.

1:30-6.7 Timely filing of notice of adoption

In order to avoid the expiration of a chapter or a proposed rulemaking, or to avoid a break in effectiveness between an emergency adoption and the adoption of a concurrent proposal, a notice of adoption shall be filed on or before the expiration date of the chapter, proposal or emergency adoption. If such date falls on a Saturday, Sunday or legal holiday, the filing shall occur no later than the next business day after the expiration date.

New Rule, R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).
Amended by R.2001 d.52, effective February 5, 2001.
See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).
Substituted "next" for "last" preceding "business day" and "after" for "prior to" preceding "the expiration date."
Recodified from N.J.A.C. 1:30-4.7 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).