

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; and

8. A smart growth impact statement which shall describe the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

(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new rule, amendment, repeal or re adoption, specifically indicating additions and/or deletions of any rule being repealed or recodified.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 Repealed (b); recodified (c) to (b) with additional text added to (b)4.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.

Amended by R.2002 d.187, effective June 17, 2002.
See: 34 N.J.R. 1074(a), 34 N.J.R. 2027(a).

In (c), added 8.

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).

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 and amended by N.J.A.C. 1:30-3.1(h) through (i) 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).

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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).

1:30-5.3 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. 1:30-5.4, 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".

Amended by R.2006 d.283, effective August 7, 2006.

See: 38 N.J.R. 1117(a), 38 N.J.R. 3159(a).

In (c)4i, substituted "5.4" for "3.3".