

CHAPTER 30

RULES FOR AGENCY RULEMAKING

Authority

N.J.S.A. 52:14B-4, 52:14B-7 and 52:14F-5(f), (h) and (i).

Source and Effective Date

R.1991 d.85, effective January 25, 1991.
See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Executive Order No. 66(1978) Expiration Date

Chapter 30, Rules for Agency Rulemaking, expires on January 25, 1996.

Historical Note

This chapter was originally codified at N.J.A.C. 15:15, Rules of Administrative Procedure. With the enactment of P.L. 1981 c.27 on February 9, 1981, to be effective on 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 to be operative on March 11, 1981, as R.1981 d.83. See: 13 N.J.R. 171(a), 13 N.J.R. 255(d).

The amendments to the chapter 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; (4) consolidate various provisions and repeal certain rules which repeated statutory language.

After one year of operation under P.L. 1981 c.27, the chapter was substantially amended to address several comments and criticisms while operating under the new statutory requirements. Amended 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.

This chapter was readopted pursuant to Executive Order No. 66(1978) 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. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

Law Review Commentaries

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 promulgated rule 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.

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).

“Administrative Rules and Publications” means that Division of the Office of Administrative Law to which documents shall be submitted, formerly the Division of Administrative Procedure of the Department of State.

“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.

“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 re-adoption 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 Administrative Rules and Publications Division; 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”.

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) Division of Administrative Rules and Publications, 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. Rule inquiries (609) 588-6543;
2. Customer services (609) 588-6606; and
3. Billing inquiries (609) 588-6517.

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).

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. Thus, the section should be cited as N.J.A.C. 1:30-1.4.

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." Thus, the third item of page 27 of the first volume of the Register would be cited as: 1 N.J.R. 27(c).

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 and Publications.

(b) Any person shall, upon request, be afforded an opportunity to examine any document maintained by the Division of Administrative Rules and Publications 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.

1:30-1.9 Copies of documents; fees

(a) Any person may obtain copies of filed documents from the Division of Administrative Rules and Publications 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: \$.50 per page;
2. Eleventh page to 20th page: \$.25 per page;
3. All pages over 20: \$.10 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.

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.

1:30-1.11 Computation of time

In computing any period of time fixed by a rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

1:30-1.12 Compliance

(a) Upon an initial determination by the OAL, that any proposed or adopted rule, pre-proposal for a rule or any notice is not in compliance with the technical or procedural requirements concerning rulemaking, the OAL may temporarily suspend the processing of that document. In such situations, the OAL shall contact the agency to indicate the basis for the initial determination of non-compliance. The OAL and the agency shall mutually review the initial determination. The OAL shall then make a final determination regarding noncompliance. The OAL shall assist the agency in a cooperative effort to obtain compliance.

(b) If the OAL determines that there is an issue of non-compliance which concerns statutory authority, related legal issues, or contested case jurisdiction, it shall refer the matter to the Office of the Attorney General for final determination.

Administrative Correction: "Pre-proposal for a rule" and "mutually review the initial determination. The OAL shall" was omitted in (a). See: 19 N.J.R. 777(a).

1:30-1.13 Invalidation of rule

In the event that a proposed or adopted rule is suspended or otherwise rendered inoperative or ineffective by Court rule or ruling, by legislative action or by Executive Order, the Office of Administrative Law shall, upon receipt of notice of the event prepare and publish a notice in the Register and the Code, as appropriate.

Amended by R.1991 d.85, effective February 19, 1991. See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Clarified that OAL shall prepare notice of invalidation.

1:30-1.14 Filing of a document

(a) Upon receipt of a document for filing, there shall be stamped on its face the following:

1. The hour and date of receipt; and
2. The word "received".

(b) Upon acceptance for publication, the document shall be stamped filed and is deemed filed as of the date of receipt.

(c) All proposals shall be assigned a proposed rule number (PRN) by Administrative Rules and Publications. All adoptions shall be assigned a rule document number (R.d.) by Administrative Rules and Publications.

Amended by R.1991 d.85, effective February 19, 1991. See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Technical revisions.

SUBCHAPTER 2. RULEMAKING GENERALLY

1:30-2.1 Clarity of rules

In order to be accepted for filing, a document shall be written in a reasonably simple, clear, understandable manner which is easily readable and offers affected persons and other interested persons fair notice of its provisions. In the case of a rule of a highly complex technical nature, the requirements of simplicity, clarity and understandability shall be applied primarily to the summaries of the rule which are printed with the proposal. The rule itself shall be reasonably simple, clear, and understandable to a person with some subject matter expertise. Any rule activity or notice which does not comply with the technical or proce-

dural requirements concerning rulemaking may be subject to the provisions of N.J.A.C. 1:30-1.12.

1:30-2.2 Incorporation by reference

(a) Specifically designated sections of the following sources may be incorporated into a rule by reference:

1. New Jersey Statutes Annotated;
2. United States Code;
3. New Jersey Session Laws;
4. Code of Federal Regulations;
5. Federal Register;
6. Any uniform system of accounts published by the National Association of Regulatory Utility Commissioners;
7. Any generally available standard published by any of the standardizing organizations listed in the National Bureau of Standards Special Publication 417, Director of United States Standardization Activities or supplements thereto or reissues thereof; or
8. Any other generally available publication approved by the Director.

(b) Any section of a source incorporated by reference shall be made available for public inspection by the adopting agency and shall be available in printed form from the adopting agency or the original source for a reasonable fee.

(c) Any agency incorporating any section of a source by reference shall adopt and file as a rule appropriate language indicating:

1. What is incorporated including either:
 - i. The specific date or issue of the section of the source incorporated; or
 - ii. A statement indicating whether the section incorporated includes future supplements and amendments.
2. Where and how a copy of the section may be obtained.

(d) Except with respect to a section of a source indicated in (a)1 through (a)5 above, an agency shall file with the Office of Administrative Law as part of a proposed or adopted rule a copy of the section incorporated by reference.

(e) Where a State agency rule elaborates on, or summarizes or paraphrases a State or Federal statute or Federal regulation, the rule shall contain a citation of, reference to or footnote on that statute or regulation.

1:30-2.3 Single subject for each section of a rule

Each proposed or adopted section or notice shall embrace but one subject, and that shall be expressed in the title.

1:30-2.4 Authorization for rule activity

(a) A notice of adoption shall be signed by the adopting agency head, or any other person authorized by statute.

(b) A notice of proposed rule or any other rule activity shall be signed either by:

1. The adopting agency head; or

2. By an agency employee who has been duly authorized by the agency head to propose rules, and for whom a written authorization signed by the agency head has been submitted to the Office of Administrative Law.

(c) Any rule activity not properly authorized shall be returned to the agency.

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).

1:30-2.5 Effect of statement for proposed rule

The statements for a proposed rule (N.J.A.C. 1:30-3.1(a)3) and for any change upon adoption of a rule (N.J.A.C. 1:30-4.1(a)5) are not part of the rule, but are intrinsic parts of the proposal and adoption as published in the Register. As such, these statements may be used in interpreting the rule.

1:30-2.6 Official copy of proposed, adopted and promulgated rule

(a) The Register constitutes the authoritative text of any notice printed therein.

(b) The full text printed in the Register of any proposed rule, adopted rule or any change made upon adoption of a proposed rule, constitutes the authoritative text of that proposed rule, adopted rule or change. An official copy of the text printed in the Register shall be kept on file by the OAL.

(c) Where the full text of an adopted rule is not printed in the Register, the full text of the proposed rule printed in the Register, plus the full text of any change printed in the Register upon adoption, constitutes the authoritative text of the adopted and promulgated rule. An official copy of the text printed in the Register shall be kept on file by the OAL.

(d) Where the full text of any proposed rule, adopted rule, or change is not printed in the Register, the authoritative text is the copy submitted by the adopting agency and kept on file by the Office of Administrative Law.

1:30-2.7 Administrative correction and changes

(a) Upon being advised in writing by an agency or upon its own initiative, with notice to the appropriate agency, the OAL may make an administrative correction or change to any rule published in the New Jersey Register or New Jersey Administrative Code. An administrative correction or change shall be effective upon filing with the OAL.

(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".

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 telephone number of the person(s) to receive written or oral comments.

(f) The notice of proposed rule shall include a brief statement for 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.

(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 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 the notice of proposed rule, as filed, 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.

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.

(e) The public hearing shall be recorded electronically or stenographically, and audio tapes, stenographic tapes or other untranscribed record of the proceeding shall be maintained by the agency. If a transcript is requested by any interested person, the agency shall arrange for the production of the transcript and one copy. After the requester pays for the transcript and copy, the original shall be delivered to the requester and the transcript copy filed with the agency.

New Rule, R.1991 d.85, effective February 19, 1991.
See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Administrative correction to (d).
See: 23 N.J.R. 847(b).

1:30-3.4 Rulemaking record

(a) The agency shall retain a record of any oral and written comments or other material received in response to a proposal (N.J.A.C. 1:30-3.1) or a public hearing (N.J.A.C. 1:30-3.3A) for a period of one year following the date of publication. The rulemaking record shall include the following:

1. The date, the method of issuance and a copy of any notices concerning the rule activity, including any notice mailed to interested persons pursuant to N.J.A.C. 1:30-3.1(h)3 and any additional publicity pursuant to N.J.A.C. 1:30-3.1(h)4.

2. A description of the public comments on the notice of proposed rule;

i. The names of the persons commenting on the notice of proposed rule;

ii. The name of any trade, craft or professional organization or association making written or oral submissions;

iii. A copy or summary of each written submission and a summary of each oral submission of any person made in response to the notice of proposed rule, and any written answer of the agency;

iv. The certificate of the adopting officer attesting that all submissions were examined and that due consideration was given their merits prior to adoption of the proposed rule;

v. A description of the principal points of controversy revealed during the proceeding; and

vi. A statement of the reasons for accepting and rejecting the public comments.

3. A description of any public hearing or other proceeding which was held as a result of the proposed rule (see N.J.A.C. 1:30-3.3A), including:

i. The date, time and place;

ii. The name and title or position of the presiding person;

iii. The nature of the proceeding; and

iv. The recommendations of the hearing officer, in the case of a public hearing conducted pursuant to N.J.S.A. 52:14B-4(g).

(b) An agency may, but is not required to, maintain a record of any proceedings conducted pursuant to N.J.A.C. 1:30-3.2. If, however, any preliminary proceedings conducted pursuant to N.J.A.C. 1:30-3.2 result in a formal proposed rulemaking, the agency shall discuss in the proposal summary such preliminary proceedings and the public's participation therein.

(c) If the proposed rule is adopted, the agency shall retain the rulemaking record for a period of not less than three years from the effective date of the adopted rule.

(d) The rulemaking record constitutes an official document of the administrative agency, is evidence of its compliance with the legislative mandate to provide opportunity for public comment, and shall be available for public inspection at the agency.

Amended by R.1991 d.85, effective February 19, 1991.
See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

Section heading was "Record of the public comment". In (a), stipulated record of any "oral and written" comments, deleted pre-proposal requirement, and added public hearing requirement; corrected references in (a)1. Added new (b), regarding preliminary proceedings; redesignated existing (b) and (c) as (c) and (d).

1:30-3.5 Negotiating a rule

(a) When an agency desires to negotiate the language of a rule proposal, the agency may voluntarily seek the assistance of the OAL in accordance with the following provisions. The negotiating a rule procedure established herein is separate and apart from any methods an agency may utilize to conduct a pre-proposal proceeding.

(b) An agency wishing to negotiate a proposal shall submit a written request to Administrative Rules and Publications, together with a summary of the subject matter; problem and purpose which the agency contemplates addressing; a list of the interests affected; and the suggested representatives (negotiating team) of these interests.

(c) Each agency and interest group shall have one representative.

(d) A negotiation team shall be composed of no more than 10 members, including the OAL representative.

(e) Administrative Rules and Publications shall review the request, contact the agency and representative of interests, if needed, and then determine whether the subject matter is feasible to negotiate (that is, appropriate for non-adversarial fact-finding and consensus); the interests involved are clearly defined; representatives of the interests sufficiently diverse, and that each representative is accountable to his/her interest group.

(f) Once Administrative Rules and Publications has determined that negotiations should commence, a notice of rule negotiation shall appear in the New Jersey Register. The notice shall identify the subject matter, interests, participants in the negotiation, and the OAL representative. Any interested party who is not heretofore represented on the negotiation team may file a petition for participation with the OAL representative.

(g) The petition for participation shall be a letter addressed to the OAL representative which outlines the petitioner's interests, and why they are not represented by the

current composition of the negotiating team. The petition shall be received by OAL no later than 10 days after the notice of negotiation appears in the Register. The OAL representative will then determine within five business days of receipt of the petition whether to include the petitioner.

(h) The OAL representative shall convene the negotiation team within 20 days of notice of negotiation in the Register. The negotiation shall be completed within 10 days of commencement of same, unless all participants agree to continue.

(i) The OAL representative will provide all participants with a final version of a negotiated rule in the form required by N.J.A.C. 1:30-3.1 within 10 days of the completion of the negotiations.

(j) The agency shall either propose the rules negotiated or notify the OAL and all representatives that it rejects the negotiation within 30 days or such further period as agreed between the OAL Director and the head of the agency that had requested the negotiation.

(k) If, after 60 days from the commencement of the negotiation, no negotiated rule has been approved, the OAL representative may terminate the negotiation and disband the negotiating team. A notice of this action shall appear in the next available Register.

1:30-3.6 Notice of petition for a rule

(a) When a person petitions an agency to begin a rule-making proceeding pursuant to N.J.S.A. 52:14B-4(f), the agency shall, within 15 days of receipt of the petition, file with the Office of Administrative Law for publication in the Register a notice of the petition's receipt. The notice of petition shall include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the agency shall mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which shall include:

1. The name of the petitioner;
2. The Register citation for the notice of petition, if that notice appeared in a previous Register;
3. Certification by the agency head that the petition was duly considered pursuant to law; and
4. The nature or substance of the agency action upon the petition; and

5. A brief statement of reasons for the agency action.

(c) Agency action on a petition may include:

1. Denying the petition, in which case the agency shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;

2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or

3. Referring the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and submitted to the OAL for publication in the Register.

(d) Each agency shall prescribe by rule the form of a petition and the procedures for its submission, consideration and disposition.

Administrative Correction: Text was omitted from (b)3.

See: 19 N.J.R. 777(a).

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

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

In (a), specified that agency shall file "a notice of the petition's receipt" for publication in Register; deleted (a)5. In (c)1, added requirements that petitioner be provided with a written statement of reasons for denial and that reasons be included in notice of action. In (c)3., clarified that the nature of further deliberations be specified "to the petitioner and in the notice of action". In (d), added requirement for "consideration and disposition" procedures.

Case Notes

Review of agency regulation requires determination of whether agency's action violates enabling act's legislative policies, whether there is substantial evidence to support findings, and whether agency clearly erred. Matter of Rulemaking, N.J.A.C. 10:82-1.2 and 10:85-4.1, 117 N.J. 311, 566 A.2d 1154 (1989).

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. Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, the names and affiliations, if any, of all persons who submitted oral or written comments, arguments, data and views concerning the proposed rule;
9. 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
10. 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."

Case Notes

Direction to re-publish rule indicated intent for publication of final rule under former rulemaking regulations; rule validity upheld as proper 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

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.*

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.

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).

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) After March 3, 1986 expiration dates shall be fixed at the chapter level in the following manner:

1. Rules in chapters where subchapters have different expiration dates shall expire on the same date as the last assigned expiration date to a subchapter in that chapter.

2. Rules in chapters in which only one subchapter has an expiration date shall expire on the same date as that subchapter.

3. Any amendment in a chapter whose subchapters have no expiration date shall receive a five year expiration date which shall attach and pertain to the entire chapter.

4. The expiration date for a rule in a new chapter shall 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. Any amendments to a readopted rule are effective upon publication.

(f) Any readoption of a rule which is proposed and could be adopted prior to its expiration date, but is not filed for adoption with the OAL until after its expiration date shall be considered a new rule which is effective upon publication in the Register. The new Executive Order No. 66(1978) expiration date shall be calculated from the date of publication.

(g) Any proposed readoption of a rule which has expired before filing the proposal shall be considered a new rule. The documents shall be returned to the agency for refiling as a new rule.

1:30-4.5 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/ARP-1) 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.

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 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. 1:30-3.1 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. Any changes to the readopted rule shall be effective upon publication of the notice of adoption. The provisions of an emergency rule may 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.

Case Notes

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.

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 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).

1:30-4.6 Effective date and promulgation of adopted rule

(a) Any rule adopted or readopted as an emergency rule pursuant to N.J.A.C. 1:30-4.5(b) and (d), readopted pursuant to Executive Order No. 66(1978) (see N.J.A.C. 1:30-4.4), or adopted as an organizational rule pursuant to N.J.S.A. 52:14B-4(b) is effective upon filing with the Office of Administrative Law.

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

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.