

“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. 1:30-5.1.

“Notice of petition for rulemaking” means that document described in N.J.A.C. 1:30-4.1 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” means that document described in N.J.A.C. 1:30-5.3 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. 1:30-5.3, a pre-proposal shall be submitted.

“Notice of proposal” means that document described in N.J.A.C. 1:30-5.1 which must be submitted to the Office of Administrative Law for filing and then published in the New Jersey Register and distributed 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. 1:30-5.3(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. 1:30-6.5), or a rule which expires pursuant to N.J.S.A. 52:14B-5.1 (see N.J.A.C. 1:30-6.4). 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. 1:30-5, the proper adoption of a rule, and the procedures upon adoption of a rule, N.J.A.C. 1:30-6.

Amended by R.1988 d.383, effective August 15, 1988.
See: 19 N.J.R. 675(a), 20 N.J.R. 1021(a), 20 N.J.R. 2052(a).

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

Added “Administrative correction . . .”, “Emergency adoption”, “Executive Order No. 66(1978)”, “Intra-agency statement”, “Inter-agency statement”, “Public hearing”, and “Regulatory material”.
Amended by R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).

Deleted “Administrative Rules and Publications” and added “Division of Administrative Rules”.
Amended by R.1996 d.120, effective April 1, 1996.
See: 27 N.J.R. 414(a), 28 N.J.R. 1823(a).
Added “Executive Order No. 27(1994)”.

Amended by R.2001 d.52, effective February 5, 2001.

See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).

In "Amend", substituted "modify" for "adopt a rule which modifies" and made plural references singular; in "Rulemaking proceeding" amended the N.J.A.C. references.

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.

Petition for Rulemaking.

See: 42 N.J.R. 855(a).

Case Notes

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

1:30-1.3 Offices

(a) The Division of Administrative Rules, Office of Administrative Law, is located at Quakerbridge Plaza, Building No. 9, PO Box 049, Quakerbridge Road, Trenton, New Jersey 08625-0049.

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

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

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

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

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

Added (c).

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

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

Amended by R.2001 d.52, effective February 5, 2001.

See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).

1:30-1.4 Citations to the Code

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

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

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

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

1:30-1.5 Citations to the Register

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

(b) The citation to material appearing in the New Jersey Register shall include the volume number, page number and

item letter, the volume and page numbers being separated by the initials, "N.J.R." As an example, the second item of page 20 of the January 3, 1995 issue would be cited as 27 N.J.R. 20(b).

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

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

1:30-1.6 Statutory citations in the Code

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

1:30-1.7 Use of headings

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

1:30-1.8 Access to documents

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

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

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

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

Added Division name and business hours.

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

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

1:30-1.9 Copies of documents; fees

(a) Any person may obtain copies of filed documents from the Division of Administrative Rules pursuant to the provisions of N.J.S.A. 47:1A-2 upon payment of a fee as follows:

1. First page to 10th page: \$.75 per page;
2. Eleventh page to 20th page: \$.50 per page;
3. All pages over 20: \$.25 per page.

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

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

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

Added (a)1-3.

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

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

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

1:30-1.10 Forms

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

1:30-1.11 (Reserved)

Repealed by R.1996 d.79, effective February 20, 1996.
See: 27 N.J.R. 4039(b), 28 N.J.R. 1198(a).
Section was "Computation of time".

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 assist the agency in a cooperative effort to obtain compliance.

(b) Upon a determination by the Director that a proposed or adopted rule, a pre-proposal for a rule, or a notice does not satisfactorily comply with these rules for agency rulemaking, the OAL shall not process for publication the proposed or adopted rule, pre-proposal for a rule or any notice.

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

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).

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), deleted fourth sentence; added a new (b); recodified former (b) as (c); in (c), substituted "may" for "shall" and "advice" for "final determination".

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.

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

1:30-1.14 Publication filing deadlines

(a) Pursuant to N.J.S.A. 52:14B-7(c), the Director will issue annually a schedule for the filing of documents for publication in the New Jersey Register. The schedule will set forth, for each Register to be published in the following year, the issue publication date, the deadline dates for the filing of proposal and adoption notices, and the minimum 30-day comment deadline for proposals. Notices of proposal and pre-proposal, of proposal comment period extensions and of proposal public hearings shall be filed on or before the proposal filing deadline. Other notices shall be filed on or before the adoption deadline.

(b) The filing deadline for the inclusion of a document in a particular issue of the Register is on or before 12:00 P.M. (noon) on the proposal or adoption date, as appropriate, specified in the publication schedule. Documents filed after the deadline will be included in the filed-for Register issue at the discretion of OAL. OAL's decision to include a late-filed document will be based upon the length and anticipated complexity of the document, the volume and anticipated complexity of documents timely filed, and availability of staff. Once a determination is made as to the Register issue in which a late-filed document will be published, OAL shall so advise the agency.

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).

1:30-1.15 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 the Division of Administrative Rules. All adoptions shall be assigned a rule document number (R.d.) by the Division of Administrative Rules.

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.
Recodified from 1:30-1.14 and 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).

SUBCHAPTER 2. RULEMAKING GENERALLY

Subchapter Historical Note

Petition for Rulemaking. See: 42 N.J.R. 855(a).

1:30-2.1 Clarity of rules

(a) In order to be accepted for filing, a document shall be written in a reasonably simple and understandable manner which is easily readable.

1. The document shall be drafted to provide adequate notice to:

- i. Affected persons; and
- ii. Interested persons with some subject matter expertise.

2. The document shall conform to commonly accepted principles of grammar.

3. The document shall contain sentences that are as short as practical, and be organized in a sensible manner.

4. The document shall not contain double negatives, confusing cross references, convoluted phrasing or unreasonably complex language.

5. Terms of art and words with multiple meanings that may be misinterpreted shall be defined.

6. The document shall be sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, reoption or amendment of the rule or regulation.

(b) Any rule activity or notice which does not comply with the standard of clarity set forth in (a) above shall be subject to the provisions of N.J.A.C. 1:30-1.12.

(c) The provisions of (a) above shall not apply to any administrative rule that a State agency adopts to conform to a model code, Federal rule, interstate agreement or other similar regulatory measure not written by the State agency but incorporated into an administrative rule. The State agency shall include in the Summary of the notice of proposal for such rule a description of the rule which complies with (a) above. For a regulatory measure incorporated by reference, as amended and supplemented, into a rule, in accordance with N.J.A.C. 1:30-2.2(c)1ii, the requirement for a notice of proposal Summary description in compliance with (a) above shall apply only to the notice of proposal in which the initial incorporation by reference was proposed.

(d) The Governor may, upon written request of a State agency, waive the requirements of this section with respect to the reoption, without amendment, of any rule or provision of a rule.

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 the section.

Amended by R.2001 d.281, effective August 6, 2001.

See: 33 N.J.R. 1885(a), 33 N.J.R. 2639(c).

In (c), added final sentence.

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) 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 or reference to that statute or regulation.

Amended by R.2001 d.52, effective February 5, 2001.

See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).

Deleted former (d) and recodified former (e) as (d).

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 reoption, 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.

Petition for Rulemaking.
See: 42 N.J.R. 855(a).

Case Notes

Proper notice of proposed regulations were given to public under former rulemaking regulations. *Bergen Pines Cty. Hospital v. New Jersey Dept. of Human Services*, 96 N.J. 456, 476 A.2d 784 (1984).

Validity of rule upheld against challenge based on violation of one year adoption requirement under former rulemaking regulation. *Insurance Brokers Assn. of New Jersey v. Sheeran*, 162 N.J.Super. 34, 392 A.2d 203 (App.Div.1978), certification denied 78 N.J. 408, 396 A.2d 594 (1978).

Compliance with notice requirements of former rulemaking regulation noted (cited as N.J.A.C. 15:5-3.5). *New Jersey Builders, Owners and Managers Assn. v. Blair*, 60 N.J. 330, 288 A.2d 855 (1972).

1:30-5.2 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 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

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).

1:30-5.3 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".