

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.2006 d.283, effective July 14, 2006.
See: 38 N.J.R. 1117(a), 38 N.J.R. 3159(a).

Chapter Expiration Date

Chapter 30, Rules for Agency Rulemaking, expires on July 14, 2011.

Chapter Historical Note

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

Chapter 30, Rules for Agency Rulemaking, was extensively revised by R.1982 d.466, effective January 3, 1983. See: 14 N.J.R. 780(a), 15 N.J.R. 29(a), 15 N.J.R. 543(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Rules for Agency Rulemaking, was readopted as R.1986 d.60, effective February 14, 1986. See: 18 N.J.R. 3(a), 18 N.J.R. 469(a), 18 N.J.R. 938(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Rules for Agency Rulemaking, was readopted as R.1991 d.85, effective January 25, 1991. See: 22 N.J.R. 3281(a), 23 N.J.R. 399(a).

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

Pursuant to Executive Order No. 66(1978), Chapter 30, Rules for Agency Rulemaking, was readopted as R.2001 d.52, effective January 16, 2001. See: 32 N.J.R. 3885(a), 33 N.J.R. 549(a).

Subchapter 3, Rulemaking Calendars, was adopted as new rules 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).

Chapter 30, Rules for Agency Rulemaking, was readopted as R.2006 d.283, effective July 14, 2006. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

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

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

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

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SUBCHAPTER 1. GENERAL PROVISIONS

Law Review and Journal Commentaries

Introduction to Administrative Law. Barbara A. Harned, 180 N.J.L.J. 9 (1996).

1:30-1.1 Short title

The provisions of this chapter shall be known as "The rules for agency rulemaking".

Case Notes

In a challenge to an amendment to a county's solid waste management plan, the appellate court rejected the argument of the Department of Environmental Protection (DEP) that because its adoption of the rulemaking requirements of the Administrative Procedure Act (APA), N.J.S.A. 52:14B-4 and N.J.A.C. 1:30, was itself discretionary, the DEP was free to disregard its own rules of procedure, former N.J.A.C. 7:26-6.6, which adopted the APA requirements. Under N.J.S.A. 52:14B-2, an agency's decision to abandon or modify its own procedural regulations had to be accomplished through rulemaking. In *re Certain Amendments to the Adopted & Approved Solid Waste Management Plan*, 133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).

Although not *ultra vires*, an amendment to a county's solid waste management plan and a redirection order implementing the amendment, which was issued by the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) and which required the county's non-municipal waste to be processed and shipped out of state, were not validly adopted because the amendment was not enacted in accordance with proscribed procedures. The DEP and the BPU failed to proceed with formal notice and comment and hold open hearings on the amendment in conformity with the rulemaking procedures of the Administrative Procedure Act, N.J.S.A. 52:14B-4 and N.J.A.C. 1:30, as required by the DEP's own rules, former N.J.A.C. 7:26-6.6. In *re Certain Amendments to the Adopted & Approved Solid Waste Management Plan*, 133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).

Due process is satisfied when agency rulemaking makes reasonable efforts to accommodate rights and interest of affected individuals. In *re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge*, Adopted New Rules, N.J.A.C. 11:18, 246 N.J. Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Rulemaking or hybrid rulemaking/adjudicatory proceedings; intra-LATA competition on an industry-wide basis. In *the Matter of the Petitions of MCI, Sprint, and AT & T Communications Companies*, 94 N.J.A.R.2d (BRC) 36.

1:30-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

"Administrative correction or change" means a correction or change to the text of a rule without formally promulgating the amendment (see N.J.A.C. 1:30-2.7).

"Adopt" means the action whereby a rule is officially approved and authorized for promulgation by an adopting agency.

"Adopting agency" means that agency authorized by law to conduct a rulemaking proceeding.

"Agency" or "State agency" is defined in N.J.S.A. 52:14B-2(a).

"Adopting agency head" means either that person designated by statute as authorized to promulgate rules, or the principal executive officer or an authorized adopting agency.

"Amend" means to modify, alter, revise or suspend the operative effect of a previously promulgated rule.

"Appendix" means any collateral material which serves to clarify, illustrate, or explain a rule.

"Code" means the New Jersey Administrative Code, published pursuant to N.J.S.A. 52:14B-7(a).

"Codify" means to devise, pursuant to N.J.S.A. 52:14B-7(f), the form in which rules are published to achieve a logical and consistent arrangement of the provisions.

"Director" means the Director of the Office of Administrative Law.

"Division of Administrative Rules" means that Division of the Office of Administrative Law to which documents shall be submitted for publication in the New Jersey Register; which reviews such documents for compliance with this chapter and the Act; which maintains permanent records concerning rule promulgation; and which provides assistance to agencies concerning the preparation, consideration, publication and interpretation of rules.

"Document" means any writing submitted to the Office of Administrative Law by an agency for the purpose of filing, publishing, or other processing pursuant to law. The singular of this term refers to the entirety of each writing although such writing establishes or affects more than one rule or subject matter, or consists of more than one page or part.

"Effective" means that a rule, pursuant to the Constitution, the Act and this chapter, has been duly adopted, filed with the Office of Administrative Law, and in the case of a new rule, amendment, or repeal, promulgated in the New Jersey Register. A readoption is effective upon timely filing with the OAL.

"Emergency adoption" means the promulgation of an amendment, repeal or new rule without public comment in response to an imminent peril to the public health, safety and welfare (see N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-6.5).

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

"Exempt agency" means any agency excluded from the requirements of the Administrative Procedure Act because it does not meet the definition of "agency" in N.J.S.A. 52:14B-2(a).

"Exempt rule" means any rule of an exempt agency or a rule of a non-exempt agency which, pursuant to N.J.S.A. 52:14B-5.1e, does not require an expiration date.

"File" means the action whereby a copy of a document is received by the Division of Administrative Rules; stamped with the date and time of receipt; entered into the registry;