

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

Effective: June 14, 2013.

See: 45 N.J.R. 1695(b).

Chapter Expiration Date

Chapter 30, Rules for Agency Rulemaking, expires on June 14, 2020.

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

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 30, Rules for Agency Rulemaking, was scheduled to expire on July 14, 2013. See: 43 N.J.R. 1203(a).

Chapter 30, Rules for Agency Rulemaking, was readopted, effective June 14, 2013. See: Source and Effective Date.

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.

“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

“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.

“Electronic mailing list” means a computer program that allows agency website visitors, at their discretion, to subscribe to, or unsubscribe from, an e-mail discussion group or e-mail mailing list controlled by the agency, and which program enables the agency to automatically send e-mail messages to multiple e-mail addresses on the user-generated subscriber list.

“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).

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; notated with the date 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. 1:30-5.1.

“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 or notice of adoption of 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.

“URL address” means a Uniform Resource Locator address, which is used for the purposes of Internet navigation and is commonly referred to as a website link, and which uses a protocol, such as “http”, and a domain name to identify, and provide website visitors with direct access to, a particular Internet file or website page.

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), 1251(a).
Amended by R.2015 d.102, effective June 15, 2015.
See: 46 N.J.R. 2221(a), 47 N.J.R. 1311(b).

Added definitions “Electronic mailing list” and “URL address”; in definition “File”, substituted “notated” for “stamped”, and deleted “and time” following the first occurrence of “date”; and in definition “Operative”, inserted “or notice of adoption of the rule”.

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-5.b.

(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).

Amended by R.2015 d.102, effective June 15, 2015.

See: 46 N.J.R. 2221(a), 47 N.J.R. 1311(b).

Rewrote (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 Invalidity 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.