

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Petition for Rules; Rulemaking Notice

Proposed Amendments: N.J.A.C. 11:1-1.1, 15.1, 15.2 and 15.3.

Proposed New Rules: N.J.A.C. 11:1-15.4 and 15.5

Proposed Repeal: N.J.A.C. 11:1-1.2

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 2:14B-1 et. seq.

Calendar Reference: See Summary below for explanations of exception to calendar requirement.

Proposal Number: PRN 2002-426

Submit comments by January 31, 2003 to:

Douglas Wheeler, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, New Jersey 08625-0325
Fax: (609) 292-0896
Email: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance (“Department”) is proposing amendments and new rules to comply with the Administrative Procedure Act (“APA”), N.J.S.A. 52:14B-1 et seq, as amended pursuant to P.L. 2001, c.5. This act governs the

rulemaking activities of all State agencies, including the Department. The APA provides a uniform application and administration of the rulemaking process.

The new requirements of the APA codified at the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30, address public participation in an agency's rulemaking process. N.J.A.C. 1:30 requires each State agency to publish a rulemaking calendar in the New Jersey Register announcing its schedule of rule proposals. An exception to this requirement permits agencies to choose to publish their proposals with a 60-day comment period. The Department has chosen to provide a 60-day comment period for all of its proposals.

The Department is proposing to add N.J.A.C. 11:1-1.1(b), that states the Department's mission.

N.J.A.C. 11:1-1.2, Public information is being proposed for repeal since the requirements of this section will be addressed in the Department's Right to Know rules. N.J.A.C. 11:1-1.3 is being recodified as 1.2.

N.J.A.C. 11:1-15.1 is being amended to clarify which requirements apply to petitions for rulemaking and which ones apply to requests for extending a public comment period for, or holding a public hearing on a proposal when sufficient public interest is established.

N.J.A.C. 11:1-15.2(b) is being amended to update the address for petitioners to reflect the newly merged operational functions of the legislative and regulatory affairs units within the Department.

N.J.A.C. 11:1-15.3(b) is amended to revise the timeframe from 30 to 60 days in which the Department shall respond to a petition for rulemaking. The Department is

amending N.J.A.C. 11:1-15.3(c) concerning action to be taken on a petition to be consistent with the APA requirement at N.J.S.A. 52:14B-4(f).

The Department is proposing new rule N.J.A.C. 11:1-15.4 which states that the Department will also provide notice of its rules via its website.

N.J.A.C. 11:1-15.5 is being proposed to establish the requirements for determining if sufficient public interest exists for the purposes of extending the comment period or holding a public hearing on a rule proposal.

The Department's rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C.1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments and new rules will have the positive effect of providing the public with a greater opportunity to participate in the rulemaking process of the Department of Banking and Insurance.

Economic Impact

Implementation of the proposed amendments and new rules will not impose any economic impact on the public in general. These amendments and new rules reflect recent amendments to the APA and N.J.A.C. 1:30 pertaining to public notice and opportunity to participate in the rulemaking process. The Department does not anticipate that there will be any additional cost associated with the implementation of these rules to the public or to itself.

Federal Standards Statement

The proposed amendments and new rules do not contain requirements that exceed any requirements imposed by Federal law. The proposed amendments and new rules represent policies of the State of New Jersey regarding matters of State law that are independent of Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of these proposed amendments and new rules.

Agriculture Industry Impact

The proposed amendments and new rules will have no impact on the agriculture industry, other than the general impact felt by all industry groups and the general public.

Regulatory Flexibility Analysis

No compliance requirements are imposed by the proposed amendments. The proposed new rules impose compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., submitting applications to demonstrate sufficient public interest for a public hearing on a rulemaking proposal. These requirements, in N.J.A.C. 11:1-15.5(b) concern the contents of the application. Small businesses will incur only the insignificant administrative cost of submitting the application. No professional services are necessary for compliance. As the

application information is necessary to properly evaluate the requests, no lesser requirements or exceptions are provided for small businesses.

Smart Growth Impact

The proposed amendments and new rules have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:1-1.1 Organization

(a) (No change.)

(b) The mission of the Department of Banking and Insurance is to regulate the banking, insurance and real estate industries in a professional and timely manner that protects and educates consumers and promotes the growth, financial stability and efficiency of those industries.

[11:1-1.2 Public information

In accordance with N.J.S.A. 52:14B-3(1), the public may obtain information or make general submissions or requests by contacting:

Division of Public Affairs
Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
E-mail: publicaffairs@dobi.state.nj.us]

11:1-[1.3]1.2 (No change in text.)

SUBCHAPTER 15 PETITIONS FOR RULES; **RULEMAKING NOTICE**

11:1-15.1 Scope

[This subchapter] **N.J.A.C. 11:1-15.2 and 15.3** shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Department of Banking and Insurance, pursuant to N.J.S.A. 52:14B-4(f). **N.J.A.C. 11:1-15.5 applies to requirements for a extension of a public comment period, or holding a public hearing when sufficient public interest is established.**

11:1-15.2 Procedure for petitioner

- (a) (No change.)
- (b) Petitions shall be sent to the following address:

New Jersey Department of Banking and Insurance
Legislative and Regulatory Affairs
 Attn: Rulemaking Petitions
 P.O. Box 325
 Trenton, NJ 08625-0325

- (c) (No change.)

11:1-15.3 Procedure of the Department

- (a) (No change.)
- (b) Within [30] **60** days of receiving [the] **a** petition, the Department will 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 will include:

1. - 5. (No change.)

(c) Department action on a petition [may include] **shall either:**

1. Deny the petition **and provide a written statement of the Department's reasons to the petitioner, and include such reasons in its notice of action;**

2. [Filing] **Grant the petition and within 90 days file** a notice of proposed rule or a notice of preproposal for a rule with the Office of Administrative Law; or

3. [Referring] **Refer** the matter for further deliberations, the nature of which [will] **shall** be specified **to the petitioner and in the notice of action** and which [will] **shall** conclude [upon a specified date] **within 90 days of such referral.** **Upon conclusion of such further deliberations, the Department shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days.**

11:1-15.4 Rulemaking activity

(a) **The Department shall provide notice of new rules, amendments, repeals or adoptions by posting these rules on its website at <http://www.state.nj.us/dobi/legsregs.htm> and to the news media maintaining a press office in the State House complex.**

(b) **The Department shall post its proposals in the Department's Library, which is located on the 1st Floor, 20 West State Street, Trenton, NJ 08625. The Department shall also distribute its proposals to the Department's list of "interested persons" by e-mail or hard copy. Interested persons are those who have informed**

the Department in writing that they wish to receive notice of its proposed regulations.

11:1-15.5 Sufficient public interest for the purposes of extending the comment period or granting a public hearing

(a) In determining whether sufficient public interest has been demonstrated for the purposes of extending the comment period pursuant to N.J.A.C. 1:30-5.4, the Commissioner shall consider the following criteria:

1. Whether comments received indicated a previously unrecognized impact on regulated entities or persons; or

2. Whether comments received raise unanticipated issues related to the notice of proposal.

(b) In determining whether sufficient public interest has been demonstrated for purposes of conducting a public hearing pursuant to N.J.A.C. 1:30-5.5, the Commissioner shall consider the application of an interested person that has been submitted on a form prescribed by the Commissioner. Such application shall be submitted within 60 days following the publication of the notice of proposal in the New Jersey Register.

1. A person interested in having a public hearing held on a notice of proposal shall submit an application on a form prescribed by the Commissioner, to Legislative and Regulatory Affairs, Department of Banking and Insurance, 20 West State Street, P.O. Box 325, Trenton, NJ 08625-0896. The application shall contain the following information:

i. The person's name, address, telephone number, agency or association (if applicable);

ii. The citation and title of the proposed rule and the date the notice of proposal was published in the New Jersey Register; and

iii. The reasons a public hearing regarding the notice of proposal is considered necessary pursuant to (c) below.

(c) Sufficient public interest for the purpose of holding a public hearing, pursuant to N.J.A.C. 1:30-5.5, shall be demonstrated if upon reviewing the application the Commissioner determines that additional data, findings and/or analysis regarding the notice of proposal are necessary for the Department to review prior to adoption of the proposal in order to ensure that the notice of proposal does not violate the intent of the statutory authority.

(d) A public hearing on a notice of proposal shall be conducted in accordance with the provisions of N.J.A.C. 1:30-5.5.

(e) The recommendations of the hearing officer, and the Commissioner's decision to accept, reject or modify any recommendations shall be summarized and published in the New Jersey Register pursuant to N.J.A.C. 1:30-5.5(g).