

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Petition for Rules; Rulemaking Notice

Proposed Amendments: N.J.A.C. 3:3-1.1

Proposed New Rules: N.J.A.C. 3:3-4

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

Authority: N.J.S.A. 17:1-8.1 and 47:1A-2

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

Proposal Number: PRN 2002-425

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, NJ 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 amending the Department's mission statement found in N.J.A.C. 3:3-1.1.

The Department is proposing new rules in subchapter 4 to address petitions for rules and rulemaking notice.

The Department is proposing new rule N.J.A.C. 3:3-4.1 which provides the scope of the subchapter.

The Department is proposing new rule N.J.A.C. 3:3-4.2 to set forth the procedural requirements for rulemaking petitions, and what the petition shall contain.

The Department is proposing new rule N.J.A.C. 3:3-4.3 which provides the timeframe for which the Department shall respond to a petition for rulemaking. It also establishes what the notice of petition shall contain. These rules also provide the actions that the Department can take on the petition.

The Department is proposing new rule N.J.A.C. 3:3-4.4 which states that the Department will also provide notice of its rules via its website and that the Department will distribute its proposals to its list of "interested persons" by e-mail or hard copy.

N.J.A.C. 3:3-4.5 is being proposed as a new rule 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. This rule also establishes what information should be contained in an application for demonstrating that sufficient public interest exists to conduct a public hearing.

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 amendment 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 amendment and new rules will not impose any economic impact on the public in general. The 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 amendment and new rules do not contain requirements that exceed any requirements imposed by Federal law. The proposed 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 amendment 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 amendment. 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 petitions for rulemaking or applications to demonstrate sufficient public interest for a public hearing on a rulemaking proposal. These requirements, in N.J.A.C. 3:3-4.3(b) and 4.5(b), concern the contents of a petition and application, respectively. Small businesses will incur only the insignificant administrative cost of submitting the petition or application. No professional services are necessary for compliance. As the petition and application information is necessary to properly evaluate the requests, no lesser requirements or exceptions are provided for small businesses.

Smart Growth Impact

The proposed amendment 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];

3:3-1.1 Mission statement of the Department

[(a)] The mission of the Department of Banking and Insurance is to [protect consumers in their interaction with the banking, insurance, and real estate industries and to promote growth and efficiency in those industries by the judicious and fair application of the laws and regulations] **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.**

SUBCHAPTER 4 PETITIONS FOR RULES; RULEMAKING NOTICE

3:3-4.1 Scope

This subchapter 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). These rules apply to requirements for a comment period extension or a public hearing when sufficient public interest is established, and to the rulemaking notice the department will provide.

3:3-4.2 Procedure for petitioner

(a) Any person who wishes to petition the Department to promulgate, amend or repeal a rule must submit to the Commissioner, in writing, the following information:

1. The name of the petitioner;

2. The substance or nature of the rulemaking which is requested;

3. The reasons for the request and the petitioner's interest in the request;

4. References to the statutory authority for the Department to take the requested action; and

5. A caption at the top of the document identifying it as a petition for rulemaking pursuant to N.J.S.A. 52:14B-4(f) and this subchapter.

(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) Any document submitted to the Department of Banking and Insurance which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further Department action pursuant to N.J.S.A. 52:14B-4(f).

3:3-4.3 Procedure of the Department

(a) Upon receipt of a petition in compliance with N.J.A.C. 3:3-4.2, the Department will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will 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 60 days of receiving a petition, the Department will mail to the petitioner, and file with the Office of Administrative Law, for publication in the New Jersey Register, a notice of action on the petition which will 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 Commissioner that the petition was duly considered pursuant to law;
 4. The nature or substance of the Department's action upon the petition;
- and
5. A brief statement of reasons for the Department's action.

(c) Department action on a petition 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. 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. Refer 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 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.

3:3-4.4 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.

3:3-4.5 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).

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