

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Readoption

Special Hearing Rules

Civil Service Commission Hearings

Readoption: N.J.A.C. 1:4A

Authority: N.J.S.A. 52:14F-5.e, f, and g.

Authorized By: Barry E. Moscovitz, Acting Director, Office of Administrative Law.

Effective Date: May 29, 2024.

New Expiration Date: May 29, 2031.

Take notice that pursuant to N.J.S.A. 52:14B-5.1.c, the special rules for Civil Service Commission hearings were scheduled to expire on July 3, 2024.

A summary of the readopted rules follows:

Subchapter 1 establishes the applicability of the rules to hearings involving major discipline, resignation not in good standing, and termination from service at the conclusion of a working test period due to unsatisfactory performance.

Subchapters 2 through 9 are reserved for potential future use.

Subchapter 10 describes discovery procedures for cases other than major discipline termination cases. The employee is entitled to review the appointing authority file and obtain copies of any document not subject to a bona fide claim of privilege. In addition, each party must provide the other with information regarding witnesses, including expert witnesses; witness summaries; and copies of documents at least 10 days before the hearing. Any other discovery must be by motion to the judge for good cause.

Subchapters 11, 12, and 13 are reserved for potential future use.

Subchapter 14 limits post-hearing submissions.

Subchapters 15 and 16 are reserved for potential future use.

Subchapter 17 provides that when a case proceeds pursuant to this chapter, is based upon a termination of a law enforcement officer from an approved school or program for failure to meet the standards at N.J.S.A. 52:17B-71, and has been appealed to the Police Training Commission pursuant to N.J.A.C. 13:1-9.1, an order must issue consolidating the cases and deeming the Police Training Commission as having the predominant interest. Parties may file arguments opposing or supporting the order with the agency heads within five working days from receipt of the order.

Generally, the process provided by this chapter has proven to be effective and efficient. The Office of Administrative Law has reviewed these rules and determined them to be necessary, reasonable, and adequate for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

(b)

OFFICE OF ADMINISTRATIVE LAW

Notice of Readoption

Civil Service Commission

Law Enforcement Officer and Firefighter Cases

Readoption: N.J.A.C. 1:4B

Authority: N.J.S.A. 40A:14-208 and 52:14F-5.e, f, and g.

Authorized By: Barry E. Moscovitz, Acting Director, Office of Administrative Law.

Effective Date: May 29, 2024.

New Expiration Date: May 29, 2031.

Take notice that pursuant to N.J.S.A. 52:14B-5.1.c, the special rules for Civil Service Commission hearings pertaining to law enforcement officers and firefighter cases were scheduled to expire on December 20, 2024.

P.L. 2009, c. 16 (N.J.S.A. 40A:14-200 et seq.), signed into law on March 5, 2009, and effective on June 1, 2009, established a 180-day time limit for the appeal process for terminations of certain law enforcement officers and firefighters. The Office of Administrative Law adopted special rules, which were effective on May 29, 2009, establishing hearing procedures for the conduct of these cases, according to the requirements at N.J.S.A. 40A:14-208 (see 41 N.J.R. 2716(a)). At that time, the rules were set to expire on July 1, 2010, the first day of the 13th month following their effective date, in accordance with P.L. 2009, c. 16. The Office of Administrative Law (OAL) readopted the rules without change, effective September 7, 2010, see 42 N.J.R. 985(a); 2321(a); and again, effective December 20, 2017, see 49 N.J.R. 3385(a); 50 N.J.R. 283(a).

A summary of the readopted sections follows:

Pursuant to N.J.A.C. 1:4B-1.1, these rules apply to hearings arising pursuant to N.J.S.A. 40A:14-200 et seq., concerning the suspension of certain law enforcement officers and firefighters. The rules do not apply when the charge relates to a pending or potential criminal charge. These rules should be read in conjunction with the rules of the Civil Service Commission at N.J.A.C. 4A:2-2.13.

N.J.A.C. 1:4B-2.1 defines “law enforcement agency,” “law enforcement officer,” “firefighter,” and “public fire department.”

Pursuant to N.J.A.C. 1:4B-3.1, appeals are filed simultaneously with the Clerk of the Office of Administrative Law and the Civil Service Commission and must use the law enforcement officer and firefighter removal appeal form, incorporated at the chapter Appendix. Appellants must provide a copy of the preliminary and final notice of disciplinary action. Failure to provide the required information may result in the appeal’s dismissal.

The time for filing an appeal and the procedure when an appeal is not simultaneously or timely filed are set forth at N.J.A.C. 1:4B-3.2.

N.J.A.C. 1:4B-10.1 requires the parties to commence discovery no later than 30 days from receipt of the notice of filing.

Post hearing submissions are prohibited, except for settlements or if expressly permitted by the judge for good cause, pursuant to N.J.A.C. 1:4B-14.1.

N.J.A.C. 1:4B-18.1 sets forth the process for extending the period for issuing a final agency decision.

Generally, the process provided by this chapter has proven to be effective and efficient. The OAL has reviewed these rules and determined them to be necessary, reasonable, and adequate for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

(c)

OFFICE OF ADMINISTRATIVE LAW

Notice of Readoption

Special Hearing Rules

Special Education Program

Readoption: N.J.A.C. 1:6A

Authority: N.J.S.A. 52:14F-5.e, f, and g.

Authorized By: Barry E. Moscovitz, Acting Director, Office of Administrative Law.

Effective Date: May 29, 2024.

New Expiration Date: May 29, 2031.

Take notice that pursuant to N.J.S.A. 52:14B-5.1.c, the special rules for Special Education cases at N.J.A.C. 1:6A were scheduled to expire on August 24, 2024. The Office of Administrative Law (OAL) is currently

preparing a rulemaking to update this chapter and will propose the same in due course, but could not have it prepared in time to propose it as part of the readoption of this chapter.

A summary of the readopted subchapters and sections follows:

Subchapter 1 establishes the applicability of these rules, which govern hearings arising out of the Special Education Program of the Department of Education, and are in implementation of Federal law, 20 U.S.C. §§ 1400 et seq., and 34 CFR 300 et seq.

N.J.A.C. 1:6A-3.1 specifies that the Office of Special Education Programs shall immediately transmit cases upon conclusion of the resolution process or mediation. This continues the process that has been used by both agencies.

N.J.A.C. 1:6A-4.1 addresses ongoing settlement efforts.

N.J.A.C. 1:6A-5.1 permits representation by legal counsel or permits a non-lawyer representative with special training or knowledge regarding handicapped children to represent a parent or child.

N.J.A.C. 1:6A-9.1 permits adjournments at the request of a party, requires adjournments to be for a specific period of time, and provides that such an adjournment extends the deadline for a decision.

N.J.A.C. 1:6A-10.1 sets forth discovery provisions.

N.J.A.C. 1:6A-12.1 continues the process for requesting and granting emergency relief.

N.J.A.C. 1:6A-14.1 establishes special procedures regarding the hearing.

N.J.A.C. 1:6A-14.2 sets forth the procedures for an expedited hearing.

N.J.A.C. 1:6A-14.3 provides that the judge may require the Department of Education to provide an interpreter at no cost, when necessary.

N.J.A.C. 1:6A-14.4 establishes the procedures for obtaining independent educational evaluations.

N.J.A.C. 1:6A-14.5 concerns transcripts and provides for obtaining transcripts by contacting the Department of Special Education Programs or the Office of Administrative Law.

N.J.A.C. 1:6A-18.1 concerns deadlines for decisions.

N.J.A.C. 1:6A-18.2 requires the protection of confidentiality of the child and parent or guardian through use of initials and other appropriate steps.

N.J.A.C. 1:6A-18.3 concerns appeals.

N.J.A.C. 1:6A-18.4 prohibits a change in the educational placement of the pupil prior to the issuance of a decision.

Generally, the hearing process provided by these rules has proven to be effective and efficient. The OAL has reviewed these rules and determined them to be necessary, reasonable, and adequate for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Agricultural Management Practices: Generally Accepted Operations and Practices

Adopted Amendments: N.J.A.C. 2:76-2A.5, 2A.6, 2A.8, and 2A.9

Proposed: December 18, 2023, at 55 N.J.R. 2447(a).

Adopted: April 1, 2024, by the State Agriculture Development Committee, Susan E. Payne, Executive Director.

Filed: May 28, 2024, as R.2024 d.062, **without change**.

Authority: N.J.S.A. 4:1C-5.f.

Effective Date: July 1, 2024.

Expiration Date: October 2, 2030.

Summary of Public Comment and Agency Response:

In response to the notice of proposed amendments at N.J.A.C. 2:76-2A.5, 2A.6, 2A.8, and 2A.9, the State Agriculture Development Committee ("SADC" or "Committee") received two comments from Jean Public.

COMMENT: Jean Public commented about the State's deer population and efforts by the New Jersey Fish and Game Council to control it.

RESPONSE: The adopted amendments update four Agricultural Management Practices (AMPs), including fencing installation for wildlife control (N.J.A.C. 2:76-2A.9). The AMPs establish recommended practices that, if complied with, provide eligible commercial farms protection from unduly restrictive municipal and public and private nuisance claims pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. The adopted amendments, including the fencing installation AMP, are unrelated to any policy or activity of the New Jersey Fish and Game Council.

COMMENT: Jean Public commented that she opposes all of the AMP rule amendments because they improperly favor the New Jersey agricultural industry to the detriment of other State residents and the environment. She specifically opposes the on-farm composting operation AMP (N.J.A.C. 2:76-2A.8), allowing for the composting of slaughter waste, because she feels that the public's eating habits should be adjusted so that the slaughter of animals would be unnecessary. She also expressed opposition to the commercial tree fruit production AMP (N.J.A.C. 2:76-2A.6) because of concerns over the toxicity of chemicals used in agriculture.

RESPONSE: The SADC respectfully disagrees. The proposed amendments update existing AMPs recommended by the SADC by which commercial agricultural operations may be eligible for Right to Farm Act protection. The concerns raised by the commenter about the on-farm composting and tree fruit productions AMPs are beyond the scope of the proposed amendments.

Federal Standards Statement

A Federal standards analysis is not required because the subject matter of the adopted amendments are governed by the Right to Farm Act and do not include standards or requirements that exceed those imposed by Federal law.

Full text of the adoption follows:

SUBCHAPTER 2A. AGRICULTURAL MANAGEMENT PRACTICES: GENERALLY ACCEPTED OPERATIONS AND PRACTICES

2:76-2A.5 Commercial vegetable production agricultural management practice

(a) Pursuant to the authority at N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Rutgers Cooperative Extension "Mid Atlantic Commercial Vegetable Production Recommendations, 2022/2023" as amended and supplemented, to be the commercial vegetable production agricultural management practice, subject to the modifications as stated at (c) below.

(b) The "Mid Atlantic Commercial Vegetable Production Recommendations, 2022/2023" is available on the Rutgers Cooperative Extension website at <http://njaes.rutgers.edu/pubs/>.

(c) The recommendations concerning sewage sludge addressed by the "Mid Atlantic Commercial Vegetable Production Recommendations, 2022/2023" in the section entitled "Sewage Sludge" or any other section, are excluded from the commercial vegetable production agricultural management practice. The application of sewage sludge/biosolids to soils used for vegetable production is not a recommended agricultural management practice.

2:76-2A.6 Commercial tree fruit production agricultural management practice

(a) Pursuant to the authority at N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Rutgers Cooperative Extension "2021/2022 New Jersey Commercial Tree Fruit Production Guide," as amended and supplemented, to be the commercial tree fruit production agricultural management practice.