

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Rules for Agency Rulemaking

Proposal Procedure

Notice of Proposed Rule

Racial and Ethnic Community Criminal Justice and Public Safety Impact

Proposed Amendments: N.J.A.C. 1:30-1.1 through 1.8, 1.10, 1.12, 1.13, 1.14, 1.15, 2.1, 2.4, 2.6 through 2.10, 3.1, 3.2, 3.3, 4.1, 5, and 6

Authorized By: Lisa James-Beavers, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14B-4 and 52:14F-5(f); and P.L. 2017, c. 286.

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

Proposal Number: PRN 2018-031.

Submit comments by May 18, 2018, to:

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Office of Administrative Law
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Trenton, New Jersey 08625
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The agency proposal follows:

Summary

P.L. 2017, c. 286, §§ 3 and 4, enacted January 16, 2018, revised the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., by amending N.J.S.A. 52:14B-4 to require State agencies to include in rulemaking notices of proposal a racial and ethnic community criminal justice and public safety impact statement. The statutory requirements for these proposal statements are proposed to be added to N.J.A.C. 1:30-5.1.

Under proposed new N.J.A.C. 1:30-5.1(c)10, a notice of proposal shall include a racial and ethnic community criminal justice and public safety impact, which shall set forth whether the rulemaking will have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. If the rulemaking will have any of the noted impacts, the statement shall indicate how the rulemaking would affect racial and ethnic minorities, whether the rulemaking is likely to have a disproportionate or unique impact on the racial or ethnic communities, the rationale for the rulemaking having an

identifiable impact on racial and ethnic persons in the State, and any anticipated impact upon correctional facilities and services for racial and ethnic minorities, the adjudication of criminal and juvenile justice matters involving racial and ethnic communities, and/or the public safety in racial and ethnic communities and the victims and potential victims in those communities. These requirements for the content of the impact statement shall not apply to any proposed rule that the proposing agency finds would impose no impact, either because the scope of the rule is minimal, or there is an extreme unlikelihood that the rule would evoke any of the stated effects. The proposing agency's finding in this regard and an indication of the basis for its finding shall be included in the impact statement.

In addition to the proposed new paragraph above, the Office of Administrative Law (OAL) proposes to amend N.J.A.C. 1:30-1.2, Definitions, to include a definition of "signature of agency head." In 2009, the OAL undertook the endeavor to accept electronic filings from State rulemaking entities and by 2010, paper filings of rulemaking notices were no longer accepted. However, the rules continued to require a physical signature of an agency head on all documents. The new definition is added to clarify that a signature shall include the actual physical signature of the agency head, the prior-approved stamp or electronic signature, or the submission of a notice for publication through an e-mail address approved by the agency for the purpose of submitting notices approved by the agency head to the OAL.

At N.J.A.C. 1:30-1.3, Offices, in addition to updating phone numbers to contact Division of Administrative Rules (Division) in the OAL, the time to review documents at the OAL is proposed to be changed from 9:00 A.M. through 4:00 P.M. to from 9:00 A.M. through 3:00 P.M. to align with staffing levels maintained at the Division.

At N.J.A.C. 1:30-1.6, Statutory citations in the Code, "published yearly pamphlet laws" is proposed for amendment to delete "yearly" as these documents are published more frequently than annually by the Legislature.

At N.J.A.C. 1:30-1.8, Access to documents, subsection (b) is proposed for amendment to clarify that the only documents that may be examined are "public" documents maintained by the Division. Further, the time to review documents at the OAL is proposed to be changed from 9:00 A.M. through 4:00 P.M. to from 9:00 A.M. through 3:00 P.M. to align with staffing levels maintained at the Division.

At N.J.A.C. 1:30-1.14, Publication filing deadlines, the proposed amendment includes that the publication schedule will include a 60-day comment period as well, as that has been included in the schedule for many years. Subsection (b) is proposed for amendment to clarify that the submission deadline time of 12:00 P.M. (noon) pertains to the proposal or adoption "deadline" date, not the proposal or adoption date (which may happen long before a document is filed with the OAL).

At N.J.A.C. 1:30-1.15, Filing of a document, subsections (a) and (b) are proposed to be amended and merged to coincide with the electronic

filing (discussed above) and the inability to stamp a non-existent paper copy.

At N.J.A.C. 1:30-2.4, Authorization for rule activity, new subsection (c) is proposed to coincide with the proposed new definition of "signature of agency head" and permit an approved e-mail address to submit a document without a physical signature requirement and it shall be deemed as signed.

At N.J.A.C. 1:30-2.10, Agency Internet website posting required, a proposed amendment to subsection (c) clarifies that the method that must be provided need not be through e-mail, but can be solely by other reasonable means.

At N.J.A.C. 1:30-5.2, Publication and distribution of notice of proposal, paragraph (a)6 is proposed for amendment to clarify that the additional method of publicity to be undertaken by an agency is one in addition to those listed at N.J.A.C. 1:30-5.2(a)2, 3, 4, and 5, not just publication in the New Jersey Register (Register); that is, notice in a public newspaper, trade-type publications, distribution of a press release, posting notice in an appropriate location, including an agency's website. It should be noticed that an agency is required, under the APA, to include, in its organizational rules, what its additional publicity will be (as noted at N.J.A.C. 1:30-5.2(a)6ii(4)(A)). Sub-subparagraph (a)6ii(4)(A) is proposed for amendment to update the internal cross-reference.

At N.J.A.C. 1:30-5.5(a), the final sentence, pertaining to submission to the OAL of public hearing requests by a third-party is proposed for deletion as the OAL has not received such a submission from the public in at least the last 15 years and such a requirement should not be mandated prior to a hearing being approved when requested by a third-party. Removing the requirement of sending a copy of the notice to the OAL does not change the public's right to request a hearing, it merely lessens the administrative burden on the person or entity requesting such a hearing from the agency.

At N.J.A.C. 1:30-6.1, Notice of adoption, paragraph (b)7 is proposed for amendment to include changes upon adoption pursuant to a notice of substantial change (as permitted by P.L. 2011, c. 33).

At N.J.A.C. 1:30-6.2, Time for filing notice of adoption, subsection (a) is proposed for amendment to delete "to the Senate and Assembly," thereby removing the requirement that no proposed rulemaking can be adopted unless and until the passage of 60 days after the notice of proposal was received by the President of the Senate and the Speaker of the General Assembly. This requirement was added to the APA pursuant to P.L. 1981, c. 27, but was deemed unconstitutional pursuant to *The General Assembly of the State of New Jersey v. Brendan T. Byrne et al.*, 90 N.J. 376 (1982) and deleted from the APA pursuant to P.L. 2001, c. 5. All notices of proposal are still submitted to the President of the Senate and the Speaker of the General Assembly within 2 business days of submission by the proposing agency to the OAL.

At N.J.A.C. 1:30-6.4, Expiration date for adopted rule, subsection (h) is proposed for amendment to state that a notice of readoption with technical changes shall also include a line in the heading of the notice for the effective date for the technical changes, which is the publication date of the notice in the Register.

Throughout the chapter, a number of technical, non-substantial amendments are also proposed to align the chapter with OAL's rulemaking standards. These proposed amendments only affect punctuation, grammar, syntax, and the readability of the rule; there is no change to the substantive nature of the chapter, except as discussed above.

As the OAL has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments adding new N.J.A.C. 1:30-5.1(c)10 would incorporate the statutory requirements for the inclusion of a racial and ethnic community criminal justice and public safety impact statement into the OAL rule concerning the content of a notice of proposal. The OAL does not anticipate any social impact from these proposed amendments beyond that which results from the statutory requirements. The requirements should serve to advise the public of any impacts of the

rulemaking on pretrial detention, sentencing, probation, or parole policies in the State. Such information may serve to improve the public's understanding of the effects of a proposed rule, and permit better informed and more effective comment on such rule in the rulemaking process.

The proposed amendments to N.J.A.C. 1:30-1.3 and 1.8 may have a negative impact on the public if someone is looking to access documents between 3:00 and 4:00 P.M.; however, over the last 15 years, the Division has never had a request from someone looking to come and view a document. All documents requests are filed electronically from the Division.

The proposed amendment to N.J.A.C. 1:30-2.10 should have a positive impact on the State rulemaking entities as they do not need to have an e-mail address for concerns to be addressed. This amendment should not have any impact on the public as the State rulemaking entity must have some other reasonable means, if they do not provide an e-mail address.

The proposed amendment to N.J.A.C. 1:30-5.5(a) should have a positive impact on the public as it removes an additional step to requesting a public hearing.

The proposed amendment to N.J.A.C. 1:30-6.1 should have a positive impact on the public as it codifies a requirement already in place that gives the public notice at the beginning of a notice of adoption if there was some rulemaking action between the notice of proposal and the notice of adoption.

The proposed amendment to N.J.A.C. 1:30-6.4(h) should have a positive impact on the public as it mandates that agencies explicitly state the effective date to technical changes in a notice of readoption filed under subsection (h).

The remainder of the proposed amendments should have no impact as they merely clarify or make technical changes for grammar and ease of readability of the chapter.

Economic Impact

The proposed amendment adding new N.J.A.C. 1:30-5.1(c)10 would incorporate the statutory requirement for the inclusion of a racial and ethnic community criminal justice and public safety impact statement into the OAL rule concerning the content of a notice of proposal. The OAL does not anticipate any economic impact from the proposed amendment beyond that which results from the statutory requirement. In developing a notice of proposal, State agencies would incur such administrative and research costs as are necessary in order to develop the information required in the statement.

The remainder of the proposed amendment should either have a minimal beneficial economic impact, or no impact at all, as they would be no economic effect if any of the amendments are adopted.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

No jobs will be generated or lost as a result of the proposed amendments.

Agriculture Industry Impact

No impact on the agriculture industry is anticipated as a result of the proposed amendments.

Regulatory Flexibility Statement

The proposed amendments impose rulemaking process compliance requirements on State agencies. No compliance requirements are imposed on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment to N.J.A.C. 1:30-5.5(a) removes a potential compliance requirement on any small business that would be seeking to request a public hearing on a published notice of proposal; however, as indicated in the Summary above, no such request has been received by the OAL in at least the last 15 years.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because as the amendments incorporate the statutorily mandated racial and ethnic community criminal justice and public safety impact statement and propose changes that have nothing whatsoever to do with housing or its affordability in the State, but rather pertain to the State rulemaking procedures.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because as the amendments incorporate the statutorily mandated racial and ethnic community criminal justice and public safety impact statement and propose changes that have nothing whatsoever to do with housing or its affordability in the State, but rather pertain to the State rulemaking procedures.

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

SUBCHAPTER 1. GENERAL PROVISIONS

1:30-1.1 Short title

The provisions of this chapter shall be known as “The rules for agency rulemaking.”[.]

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.

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

“Appendix” means any collateral material [which] **that** serves to clarify, illustrate, or explain a rule.

... “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] **that** reviews such documents for compliance with this chapter and the Act; [which] **that** maintains permanent records concerning rule promulgation; and [which] **that** provides assistance to agencies concerning the preparation, consideration, publication, and interpretation of rules.

... “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)] **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] **that**, pursuant to N.J.S.A. 52:14B-[5.1e]**5.1(e)**, does not require an expiration date.

... “**Notice of adoption**” means that document described in N.J.A.C. 1:30-6.1, which must be submitted to the Office of Administrative Law for filing and then published in the New Jersey Register to give legal effect to a proposed rulemaking.

“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.

“OAL” means the New Jersey Office of Administrative Law, which is in, but not of, the Department of the Treasury.

... “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] **that** was duly adopted by an agency and filed with the Office of Administrative Law.

... “Public hearing” means a legislative type proceeding conducted either as part of a rulemaking or to consider a possible rulemaking [which] **that** 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] **that** 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] **that** 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.

... “Rulemaking proceeding” means those steps [which] **that** 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.

“Signature of agency head” shall include the actual, physical signature of the agency head, the prior-approved stamp or electronic signature, or the submission of a notice for publication through an e-mail address approved by the agency for the purpose of submitting notices approved by the agency head to the OAL.

“URL address” means a Uniform Resource Locator address, [which] **that** 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.

1:30-1.3 Offices

(a) (No change.)

(b) Hours during which documents may be submitted or reviewed are from 9:00 A.M. to [4:00] **3:00 P.M.**, Monday through Friday, **except for State holidays [excepted].**

(c) Information may be obtained by telephoning the following for:

1. Rulemaking information (609) [588-6614] **689-4012**;
2. Document filings (609) [588-6613 or 6606] **689-4012**; and
3. Administrative Code research (609) [588-6613 or 6606] **689-4012**.

1:30-1.4 Citations to the Code

(a) (No change.)

(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.

1:30-1.5 Citations to the Register

(a) (No change.)

(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).

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) (No change.)

(b) Any person shall, upon request, be afforded an opportunity to examine any **public** document maintained by the Division of Administrative Rules during business hours 9:00 A.M. to [4:00] **3:00** P.M., Monday through Friday, **except for State** holidays [excepted].

1:30-1.10 Forms

From [time to time] **time-to-time** the Office of Administrative Law may adopt as interagency statements the forms and formats [which] **that** shall be used in rule activities.

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] **this chapter**, 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] **that** concerns statutory authority, related legal issues, or contested case jurisdiction, it may refer the matter to the Office of the Attorney General for advice.

1:30-1.13 Invalidation 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.

1:30-1.14 Publication filing deadlines

(a) Pursuant to N.J.S.A. 52:14B-7(c), the Director will [issue] annually **issue** 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 **and 60-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.

(b) The filing deadline for the inclusion of a document in a particular issue of the Register is on or before 12:00 P.M. (noon) on the proposal or adoption **deadline** date, as appropriate, **as** specified in the publication schedule. Documents filed after the deadline will be included in the filed-for Register issue at the discretion of OAL. OAL's decision to include a late-filed document will be based upon the length and anticipated complexity of the document, the volume and anticipated complexity of documents timely filed, and availability of staff. Once a determination is made as to the Register issue in which a late-filed document will be published, OAL shall so advise the agency.

1:30-1.15 Filing of a document

(a) Upon receipt of a document for filing, there shall be [stamped on its face the following:

1. The hour and date of receipt; and
2. The word "received".

(b) Upon acceptance for publication, the document shall be stamped filed and is deemed filed as of the date of receipt.] **electronically added to the header of the document: the date received, the Register publication the document is filed for, and the proposal or adoption document number, as applicable.**

[(c)] (b) All proposals shall be assigned a proposed rule number (PRN) [by the Division of Administrative Rules. All] **and all** adoptions shall be assigned a rule document number (R.d.) by the Division of Administrative Rules.

SUBCHAPTER 2. RULEMAKING GENERALLY

1:30-2.1 Clarity of rules

(a) In order to be accepted for filing, a document shall be written in a reasonably simple and understandable manner [which] **that** is easily readable.

1.-3. (No change.)

4. The document shall not contain double negatives, confusing cross references, convoluted phrasing, or unreasonably complex language.

5. (No change.)

6. The document shall be sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes, and expected consequences of the adoption, re-adoption, or amendment of the rule [or regulation].

(b) Any rule activity or notice [which] **that** does not comply with the standard of clarity set forth in (a) above shall be subject to the provisions of N.J.A.C. 1:30-1.12.

(c) The provisions of (a) above shall not apply to any administrative rule that a State agency adopts to conform to a model code, Federal rule, interstate agreement, or other similar regulatory measure not written by the State agency but incorporated into an administrative rule. The State agency shall include in the Summary of the notice of proposal for such rule, a description of the rule, which complies with (a) above. For a regulatory measure incorporated by reference, as amended and supplemented, into a rule, in accordance with N.J.A.C. 1:30-2.2(c)ii, the requirement for a notice of proposal Summary description in compliance with (a) above shall apply only to the notice of proposal in which the initial incorporation by reference was proposed.

(d) (No change.)

1:30-2.4 Authorization for rule activity

(a)-(b) (No change.)

(c) **Any rulemaking submitted to the OAL by a previously approved e-mail address (see definition of "signature of agency head") shall be deemed authorized for purposes of this section.**

[(c)] (d) (No change in text.)

1:30-2.6 Official copy of proposed, adopted, and promulgated rule

(a) (No change.)

(b) The full text printed in the Register of any proposed rule, adopted rule, or any change made upon adoption of a proposed rule, constitutes the authoritative text of that proposed rule, adopted rule, or change. An

official copy of the text printed in the Register shall be kept on file by the OAL.

(c)-(d) (No change.)

1:30-2.7 Administrative corrections and changes

(a) (No change.)

(b) An administrative correction may be made to correct an error [which] **that** is obvious, easily recognizable, or apparent to the promulgating agency and the regulated public. An administrative correction may be made to conform a proposed or adopted rule to the intent of the agency as expressed in the proposal or adoption statements. Administrative corrections may be made to correct any part of a rule including, but not limited to, its text, spelling, grammar, punctuation, codification, and cross-references.

(c) An administrative change may be made to recodify a rule. Administrative changes may also be made to amend a rule to provide the public with notice of nonregulatory changes that have occurred since the rule was adopted. Administrative changes may include, but are not limited to, changes in:

1. Names of departments, agencies, divisions, and bureaus;
2. (No change.)
3. Addresses, phone numbers, and business hours.

(d) (No change.)

(e) [Notice] **A notice** of administrative correction or change shall be published in the New Jersey Register. The administrative correction or change with appropriate annotation shall be included in a subsequent supplement to the New Jersey Administrative Code.

1:30-2.8 Appendices

(a) Appendices shall include only material [which] **that** clarifies, illustrates, or explains a rule. An appendix may include, but is not limited to, the following:

1.-8. (No change.)

(b) Any material, such as, but not limited to, that in (a)1 through 8 above, which is non-regulatory may be included in an appendix and cross-referenced in the text of a rule.

(c) Any material, such as, but not limited to, that listed in (a)1 through 8 above, which is regulatory may be included in an appendix, as long as the appendix is incorporated by reference in the text of a rule. Any amendment to the appendix shall, therefore, be through rulemaking.

(d) The Office of Administrative Law shall, pursuant to N.J.S.A. 52:14F-5 and [N.J.S.A.] 52:14B-7(c) and (f), determine:

1. Whether any regulatory provisions found in an [Appendix] **appendix** shall be integrated and/or codified into the text of a rule; and
2. The location of an [Appendix] **appendix** to a rule in the New Jersey Register and the New Jersey Administrative Code; and
3. Whether an [Appendix] **appendix** should be published in the New Jersey Register and the New Jersey Administrative Code.

(e) (No change.)

1:30-2.9 Organizational rule; rules of practice

(a) Each agency shall:

1. Adopt as a rule, a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests; and

2. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency, and, if not otherwise set forth in an agency's rules, a table of all permits and their fees, violations and penalties, deadlines, processing times, and appeals procedures.

i. As used in this paragraph, "permit" means any agency license, permit, certificate, approval, charter, registration, or other form of permission required by law.

1:30-2.10 Agency Internet website posting required

(a) Notwithstanding any law, rule, or regulation to the contrary, each agency shall post, in a visible and [publicly-accessible] **publicly accessible** location on the agency's Internet website:

1.-2. (No change.)

(b) (No change.)

(c) An agency that posts one or more URL addresses on its Internet website pursuant to (a) above shall additionally verify, on a regular

basis, the functionality of each URL address and provide a means by which website visitors can notify the agency, through e-mail communication, [and] **or** through any other reasonable means, of any nonfunctional URL address.

(d) (No change.)

SUBCHAPTER 3. RULEMAKING CALENDARS

1:30-3.1 Publication of rulemaking calendars

(a) Each agency shall publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rulemaking notice of proposal activities for the next six months. The calendars shall be published in the first New Jersey Register for the months of January, April, July, and October and shall be filed with **the** OAL in accordance with the OAL publication schedule (see N.J.A.C. 1:30-1.14) on or before the filing deadline for notices of proposal.

(b) The calendar shall include:

1.-2. (No change.)

3. Specific citation [to] **of** the rules to be affected;

4.-6. (No change.)

1:30-3.2 Calendar amendment

(a) An agency shall notify the Director of the Office of Administrative Law when it wishes to amend its calendar of rulemaking activities. Such notice shall be in the form of a revised version of the rulemaking calendar published most recently prior to the amendment, and shall highlight the amendment, both in an explanatory statement and the appearance of the amendment text (additions in boldface, deletions in brackets) within the calendar. Notices of calendar amendment shall be filed with the OAL in accordance with the deadlines for filing notices of proposal set forth in the OAL publication schedule. An agency shall take no action on an amended rulemaking activity until at least 45 days following the first publication of the amended calendar in which the announcement of that amended rulemaking activity appears, if an amendment:

1.-2. (No change.)

3. Alters the objective, purpose, or subject matter synopsis of the rulemaking so as to change who or what shall be affected by the rulemaking and/or how they shall be affected.

(b) If a calendar amendment under (a)1 [through], **2, or 3** above appears initially in an agency's quarterly rulemaking calendar, an agency shall take no action on that amended rulemaking activity until at least 45 days following the publication of the quarterly calendar.

1:30-3.3 Exceptions

(a) The provisions of N.J.A.C. 1:30-3.1 and 3.2 shall not apply to **any** rulemaking:

1.-5. (No change.)

(b) (No change.)

SUBCHAPTER 4. PETITION FOR RULEMAKING

1:30-4.1 Notice of petition for rulemaking

(a) (No change.)

(b) Each agency shall adopt a rule prescribing the form and procedures for the consideration and disposition of the petition. The petition shall state clearly and concisely: the substance or nature of the rulemaking [which] **that** is requested; the reasons for the request and the petitioner's interest in the request; and references to the authority of the agency to take the requested action. The petitioner may provide the text of the proposed new rule, amended rule, or repealed rule.

(c) When a person petitions an agency to begin a rulemaking proceeding, the agency shall, within 15 days of receipt of the petition, file with the Office of Administrative Law for publication in the Register a notice of the petition's receipt. The notice of petition shall include:

1. (No change.)

2. The substance or nature of the rulemaking action [which] **that** is requested;

3. The problem or purpose [which] **that** is the subject of the request; and

4. (No change.)

(d) (No change.)

SUBCHAPTER 5. PROPOSAL PROCEDURE

1:30-5.1 Notice of proposed rule

- (a) (No change.)
- (b) The notice of proposal shall include a heading, which shall include, in the following order:
- 1.-3. (No change.)
 4. A suggested N.J.A.C. citation for any proposed new rule and the existing citation for any rule(s) proposed for amendment, repeal, or readoption;
 - 5.-7. (No change.)
 8. An item headed "Proposal Number:", which shall be completed by the OAL; and
 9. An announcement of the public's opportunity to be heard regarding the proposal, which shall include:
 - i.-ii. (No change.)
 - iii. The name and address of the person(s) to receive [postally-mailed written] **paper** comments **submitted through the mail** and, if an agency intends to receive oral comments telephonically, the telephone number of the person(s) to receive such comments;
 - iv.-v. (No change.)
- (c) The notice of proposed rule shall include a brief statement of the proposed rulemaking, which shall include, in the following order:
1. A [summary] "**Summary**" statement of the proposed rulemaking with a clear and concise explanation of its purpose and effect. The summary shall describe, detail, and identify:
 - i. (No change.)
 - ii. How, when, and where the effect will occur;
 - iii. What the [proposal] **rulemaking** prescribes, proscribes, or otherwise mandates;
 - iv.-v. (No change.)
 2. A [social impact] "**Social Impact**" statement, which describes the expected social impact of the proposed rulemaking on the public, particularly on any segments of the public proposed to be regulated, and including any proposed or expected differential impact on different segments of the public, including the rulemaking action, and justification [therefor] **therefor**;
 3. An [economic impact] "**Economic Impact**" statement, which describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, and particularly any segments of the public proposed to be regulated;
 4. A [Federal standards statement or analysis] "**Federal Standards Statement**" (or a "**Federal Standards Analysis**"), which addresses whether the [rules] **rule(s)** in the notice of proposal contain standards or requirements that exceed standards or requirements imposed by Federal law. The analysis shall apply to any new, readopted, or amended rule(s) under the authority of or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements.
 - i. Rules [which] **that** are not subject to any Federal standards or requirements shall be accompanied by a statement to that effect and that a Federal [Standards Analysis] **standards analysis** is not applicable to the rulemaking.
 - ii. Rules [which] **that** contain standards or requirements that do not exceed or are the same as Federal standards or requirements shall be accompanied by a statement [which] **that** cites the Federal standards or requirements and states that the standards or requirements of the rule do not exceed or are the same as those imposed by Federal law.
 - iii. Rules [which] **that** exceed standards or requirements imposed by Federal law, notwithstanding the Federal government's determination that lesser standards or requirements are appropriate, shall be accompanied by an analysis, which contains the following:
 - (1) A discussion of the agency's policy reasons for imposing standards or requirements [which] **that** exceed those required by Federal law;

(2) A cost-benefit analysis that supports the agency's decision to impose standards or requirements [which] **that** exceed those required by Federal law;

(3) A discussion [which] **that** supports the fact that the agency standard or requirement to be imposed is achievable under current technology; and

(4) A certification by the agency head that the analysis permits the public to understand accurately and plainly the purposes and expected consequences of the new, readopted, or amended rule;

5. A [jobs impact] "**Jobs Impact**" statement, which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect;

6. An [agriculture industry impact] "**Agriculture Industry Impact**" statement setting forth the nature and extent of the impact of the proposed rule on the agriculture industry;

7. A [regulatory flexibility statement or analysis] "**Regulatory Flexibility Statement**" (or "**Regulatory Flexibility Analysis**"):

i. All rules [which] **that** impose reporting, recordkeeping, or other compliance requirements on small businesses shall include a regulatory flexibility analysis [which] **that** describes the methods utilized to minimize any adverse economic impact on small businesses.

ii. "Small business" means any business [which] **that** is resident in New Jersey, independently owned and operated, not dominant in its field, and [which] **that** employs fewer than 100 [full time] **full-time** employees.

iii. Rules [which] **that** do not impose reporting, recordkeeping, or other compliance requirements on small businesses shall be accompanied by a regulatory flexibility statement [which] **that** indicates that no such requirements are imposed, and the basis for that finding.

iv. Rules [which] **that** impose reporting, recordkeeping, or other compliance requirements on small businesses shall include in the regulatory flexibility analysis with as much quantification as is practical or reliable, the following:

(1) (No change.)

(2) A description of the reporting, recordkeeping, and other compliance requirements, and the kinds of professional services likely to be needed to comply with the requirements;

(3)-(4) (No change.)

v. To indicate how the rule is designed to minimize any adverse economic impact on small businesses, the following approaches shall be considered in the regulatory flexibility analysis:

(1)-(2) (No change.)

(3) An exemption from coverage by all or part of the rule, provided that the public health, safety, or general welfare is not endangered. A finding of endangerment shall explain the relationship between the regulatory requirement that cannot be exempted and the public health, safety, or general welfare.

vi. The regulatory flexibility analysis in (c)7iv and v above shall be required whenever small businesses comprise part of, or the entire, regulated group on which reporting, recordkeeping, or other compliance requirements are imposed;

8. A [housing affordability impact analysis] "**Housing Affordability Impact Analysis**" that contains a description of the types and an estimate of the number of housing units to which the [proposed rule] **rulemaking** will apply, and a description of the estimated increase or decrease in the average cost of housing that will be affected by the [proposed rule] **rulemaking**. As used in this paragraph, "types" means housing groups distinguished by the following categories: housing reserved for occupancy by very [low,] **low-**, low and [moderate and middle income] **moderate-**, and **middle-income** households, respectively; [single family] **single-family**, two-family, and multi-family housing; and rental housing and for-sale housing.

i. [A housing affordability impact] **An analysis under this paragraph** shall not include the descriptions required under (c)8 above if the proposing agency finds that the [proposed rule] **rulemaking** would impose an insignificant impact[, either because the scope of the rule is minimal, or] **on the affordability of housing and** there is an extreme unlikelihood that the [rule] **rulemaking** would evoke a change in the average costs associated with housing. The agency's finding and an

indication of the basis for its finding shall be included in the [housing affordability impact] analysis; [and]

9. A [smart growth development impact analysis] **“Smart Growth Development Impact Analysis”** that contains a description of the types and an estimate of the number of housing units to which the [proposed rule] **rulemaking** will apply, a description of the estimated increase or decrease in the availability of affordable housing that will be affected by the [proposed rule] **rulemaking**, and a description as to whether the [proposed rule] **rulemaking** will affect, in any manner, new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. As used in this paragraph, “types” means housing groups distinguished by the following categories: housing reserved for occupancy by very [low] **low-**, low and [moderate and middle income] **moderate-**, and **middle-income** households, respectively; [single family] **single-family**, two-family, and multi-family housing; and rental housing and for-sale housing.

i. [A smart growth development impact] **An analysis under this paragraph** shall not include the descriptions required under (c)9 above if the proposing agency finds that the [proposed rule] **rulemaking** would impose an insignificant impact[, either because the scope of the rule is minimal, or] **on smart growth and** there is an extreme unlikelihood that the rule would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The agency’s finding and an indication of the basis for its finding shall be included in the [smart growth development impact] analysis[.]; **and**

10. A **“Racial and Ethnic Community Criminal Justice and Public Safety Impact”** statement that shall set forth whether the rulemaking will have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. If the rulemaking will have any of the noted impacts, the statement shall indicate:

- i. **How the rulemaking would affect racial and ethnic minorities;**
- ii. **Whether the rulemaking is likely to have a disproportionate or unique impact on the racial or ethnic communities;**
- iii. **The rationale for the rulemaking having an identifiable impact on racial and ethnic persons in the State; and**
- iv. **Any anticipated impact upon:**

(1) **Correctional facilities and services for racial and ethnic minorities;**

(2) **The adjudication of criminal and juvenile justice matters involving racial and ethnic communities; and/or**

(3) **The public safety in racial and ethnic communities and the victims and potential victims in those communities.**

(d) (No change.)

1:30-5.2 Publication and distribution of notice of proposal

(a) After the OAL’s receipt of a notice of proposal that conforms to the requirements of N.J.A.C. 1:30-5.1:

1. (No change.)

2. The OAL shall publish the notice of proposal in the next available issue of the New Jersey Register. Pursuant to N.J.S.A. 52:14B-7(c), any notice of proposal [which] **that** would be cumbersome, or unduly expensive to publish, shall not be printed in full. Instead, such notices shall be summarized in the Register. The proposing agency shall make available the notice of proposal and provide in the published notice the manner in which, and from where, copies may be obtained;

3.-5. (No change.)

6. The agency shall undertake an additional method of publicity, other than [publication in the Register] **dissemination under (a)2, 3, 4, and 5 above**. Each agency shall adopt rules prescribing the manner in which it shall provide additional publicity under this paragraph, which rules shall set forth the circumstances under which each additional method shall be employed.

i. The additional method of publicity shall include information on the time, place, and manner in which interested persons may present comments and either of the following:

(1) The full text of the proposed rule; [or]

(2)-(3) (No change.)

ii. The additional method of publicity may be by:

(1) (No change.)

(2) Trade, industry, government, or professional publications;

(3) (No change.)

(4) Posting of a notice in an appropriate location(s), including the agency’s Internet website.

(A) If an agency’s rule on its method of additional publicity promulgated pursuant to this paragraph provides that the agency’s method shall be posting of notice on its Internet website, the publication of a notice of proposal from the agency on the agency’s Internet website pursuant to [(a)3] **(a)5** above shall satisfy the additional publicity requirements of this paragraph for that notice of proposal.

(b) Additional notice of the [proposal] **rulemaking** under (a)3, 4, and 6 above shall be provided at least 30 days prior to the close of the public comment period.

(c) Any notice of proposal [which] **that** does not meet the requirements in N.J.A.C. 1:30-5.1 and this section may be subject to the provisions of N.J.A.C. 1:30-1.12.

1:30-5.3 Informal public input; notice of pre-proposal

(a)-(b) (No change.)

(c) The notice of pre-proposal shall include:

1. (No change.)

2. The subject matter, problem, and purpose which the agency contemplates addressing; and, when available, draft text of the contemplated rule;

3. (No change.)

4. An announcement of the public’s opportunity to be heard regarding the contemplated action, which shall include:

i. Where, when, and how persons may present their comments orally or in writing (see N.J.A.C. 1:30-5.4, Opportunity to be heard); and

ii. (No change.)

5. (No change.)

(d)-(e) (No change.)

(f) It is recommended that all rulemakings [which] **that** involve the joint or concurrent promulgation of two or more agencies (“joint proposal and adoption”) utilize a pre-proposal.

1:30-5.4 Opportunity to be heard

(a) The agency shall accept written or oral comments, arguments, data, and views for at least 30 days following publication in the Register of the notice of pre-proposal or a notice of proposal.

1. If, within 30 days of the publication of a notice of proposal, sufficient public interest is demonstrated in an extension of the time for submission of comments, the agency shall provide an additional 30-day period for the receipt of comments by interested parties. The agency shall not adopt the proposed rule until after the end of that 30-day extension.

i. (No change.)

(b)-(e) (No change.)

1:30-5.5 Public hearings

(a) An agency shall conduct a public hearing on a proposed rulemaking if requested to do so by a Legislative Committee, a State agency, or a county, local, or municipal governmental entity or if sufficient public interest is shown. The party requesting the public hearing shall submit the request to the agency within 30 days following publication of the notice of proposal in the Register. [The party requesting the public hearing shall also submit a copy of the request to the Office of Administrative Law.]

1. (No change.)

(b) If a public hearing is to be held as part of a proceeding for a pre-proposal or a proposal, the agency shall provide at least 15 days’ notice of the public hearing.

1. (No change.)

2. When a public hearing is scheduled after the notice of pre-proposal or proposal has been published, notice of the public hearing shall be published in the New Jersey Register, if such publication provides 15 days’ notice of the hearing. If timely Register publication is not feasible, notice of the public hearing may be published in the Register with less than 15 days’ notice, as long as 15 days’ notice of the public hearing is given in another manner reasonably calculated to reach the interested

public. A copy of such notice shall be filed with OAL. An agency shall also publish notice of a public hearing under this paragraph on the agency's Internet website at least 15 days prior to the hearing date.

(c) All public hearings shall be conducted by a hearing officer, who may be an official of the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to N.J.S.A. 52:14F-5, or an independent contractor.

(d) Hearings shall be conducted at such times and in locations [which] **that** shall afford interested parties the opportunity to attend.

(e) If the **hearing pertains to an agency** [has made a] **notice of proposal**, at the beginning of each hearing or series of hearings the agency shall present a summary of the factual information on which its **notice of proposal** is based, and shall respond to questions posed by any interested party.

(f) The hearing officer shall make recommendations to the agency regarding the adoption, amendment, or repeal of a rule. These recommendations shall be made public.

(g) In addition to any other publication of the results of the public hearing, the recommendations of the hearing officer, and the agency's response either accepting or rejecting the recommendations, shall be summarized and published in the New Jersey Register as set out in (g)1 through 4 below. The notice shall also state where a copy of the public hearing record may be reviewed or obtained.

1. (No change.)

2. When a proposed rulemaking results from the public hearing, the summary shall be published as part of the **notice of proposal** [notice].

3.-4. (No change.)

(h) The public hearing shall be recorded electronically or stenographically, and audio tapes, stenographic tapes, or other untranscribed record of the proceeding shall be maintained by the agency. If a copy of the record is requested by any interested person, the agency shall arrange for the production of a copy of the record. After the requester pays the agency's actual cost for the copy, the copy shall be delivered to the requester.

1:30-5.6 Rulemaking record

(a) The agency shall retain a record of any oral and written comments or other material received in response to a **notice of proposal** (N.J.A.C. 1:30-5.1) or a public hearing (N.J.A.C. 1:30-5.5) for a period of one year following the date of publication. The rulemaking record shall include the following:

1. The date, the method of issuance, and a copy of any notices concerning the rule activity, including:

i. (No change.)

ii. [Any] **The** notice distributed to the news media pursuant to N.J.A.C. 1:30-5.2(a)4; and

iii. [Any] **The** additional publicity pursuant to N.J.A.C. 1:30-5.2(a)6.

2. A description of the public comments on the notice of proposal:

i. (No change.)

ii. The name of any trade, craft, or professional organization or association making written or oral submissions;

iii. (No change.)

iv. The certificate of the adopting officer attesting that all submissions were examined and that due consideration was given to their merits prior to adoption of the proposed [rule] **rulemaking**. A copy of the signed Certificate of Proposal, Adoption, and Promulgation (form OAL [APF-[date]] **APF-(year)-(version) (for example, Form OAL APF-17-1)**) shall satisfy this requirement;

v. (No change.)

vi. A statement of the reasons for accepting [and] **and/or** rejecting the public comments.

3. A description of any public hearing or other proceeding [which] **that** was held as a result of the notice of proposal (see N.J.A.C. 1:30-5.5), including:

i. The date, time, and place;

ii.-iv. (No change.)

(b) An agency may, but is not required to, maintain a record of any proceedings conducted pursuant to N.J.A.C. 1:30-5.3. If, however, any preliminary proceedings conducted pursuant to N.J.A.C. 1:30-5.3 result

in a formal proposed rulemaking, the agency shall discuss in the **notice of proposal** Summary such preliminary proceedings and the public's participation therein.

(c) If the proposed [rule] **rulemaking** is adopted, the agency shall retain the rulemaking record for a period of not less than three years from the effective date of the adopted rule.

(d) (No change.)

1:30-5.7 Negotiating a rule

(a) When an agency desires to negotiate the language of a [rule proposal] **rulemaking**, the agency may voluntarily seek the assistance of the OAL in accordance with the following provisions. The [negotiating a] **procedure to negotiate a rule** [procedure] established [herein] **in this section** is separate and apart from any methods an agency may utilize to conduct a pre-proposal proceeding.

(b) An agency wishing to negotiate a **notice of proposal** shall submit a written request to the Division of Administrative Rules, together with a summary of the subject matter; the problem and purpose [which] **that** the agency contemplates addressing; a list of the interests affected; and the suggested representatives (negotiating team) of these interests.

(c)-(d) (No change.)

(e) The Division of Administrative Rules shall review the request, contact the agency and representative(s) of interest[s] **groups**, if needed, and then determine whether the subject matter is feasible to negotiate (that is, appropriate for non-adversarial fact-finding and consensus); the interests involved are clearly defined; representatives of the interests **are** sufficiently diverse[.]; and that each representative is accountable to his or her interest group.

(f) (No change.)

(g) The petition for participation shall be **in the form of** a letter addressed to the OAL representative, which outlines the petitioner's interests, and why they are not represented by the current composition of the negotiating team. The petition shall be received by **the** OAL no later than 10 days after the notice of negotiation appears in the Register. The OAL representative will then determine within five business days of receipt of the petition whether to include the petitioner.

(h)-(k) (No change.)

SUBCHAPTER 6. PROCEDURE UPON ADOPTION

1:30-6.1 Notice of adoption

(a) (No change.)

(b) The notice of adoption shall contain, in the following order:

1.-3. (No change.)

4. The N.J.A.C. citation for any adopted new rule and the existing citation for any rule(s) amended, repealed, or readopted;

5. (No change.)

6. After "Adopted:", the date of adoption and the name, title, and signature of the adopting agency head or any other person authorized by statute to adopt agency rules;

7. After "Filed:", the date the notice of adoption is filed with the OAL and whether [what is adopted] **the proposed rulemaking** is adopted "without change" from the proposal, [or] with "**non-substantial** changes not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3)," **with "substantial changes to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-4.1," or some combination thereof;**

8. After "Authority:," a citation to the specific N.J.S.A. statutory authority for the [adoption] **rulemaking** or the [Public Law] **public law** number if an N.J.S.A. citation is unavailable. An agency may not cite its general statutory authority, unless specific legal authority is unavailable and the agency is relying on its general or residual powers, in which case a statement to that effect must have been made in the proposal Summary;

9. After "Effective Date:," the effective date of the **notice of adoption**;

10. If applicable, after "Operative Date:," the operative date of the **notice of adoption**, if later than the date of Register publication;

11. After "Expiration Date:," the expiration date(s) of the rule(s) adopted, amended, repealed, or readopted established in accordance with N.J.A.C. 1:30-6.4. If the rule(s) affected is exempt from having an

expiration date, a statement of that exemption, including its basis, shall be provided;

12. (No change.)

13. A Summary of Public Comments and Agency Responses, that shall include a summary of the comments, arguments, data and views received, and points of controversy developed during the rulemaking proceeding; the reasons for adopting the public comments accepted; and the reasons for rejecting the public comments rejected[;].

i. Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, this [Summary] **summary** shall include the names of all persons who submitted oral or written comments, arguments, data, and views concerning the **notice of proposal**. If the person is commenting on behalf of an entity, the adopting agency shall list as the commenter either the person and the entity for which the person is commenting, or the entity alone;

14. Summary of Changes Upon Adoption, describing any changes between the rules as proposed and adopted, and the reasons for the changes. Changes upon adoption described and explained in the notice of adoption in response to a comment need not be included in this [Summary] **summary**, in which case this portion of the notice would be a Summary of [Agency Initiated] **Agency-Initiated** Changes;

15. A Federal Standards Statement[,] (or a Federal Standards Analysis and agency head certification[.]) as required by N.J.A.C. 1:30-5.1(c)4.

i. If there are no changes upon adoption, the statement or analysis published as part of the **notice of proposal** may be included;

ii. If there are changes upon adoption [which] **that** affect whether or not the rule exceeds Federal standards or requirements or [which] **that** require reproposal, the changes shall be evaluated and a new statement or analysis prepared pursuant to N.J.A.C. 1:30-5.1(c)4iii; and

16. (No change.)

(c) Along with a notice of adoption pursuant to (a) and (b) above, the agency shall also complete and submit to the OAL a Certificate of Proposal, Adoption, and Promulgation (form OAL [APF-[date]] **APF-(year)-(version) (for example, Form OAL APF-17-1)**) signed by the adopting agency head, or other person authorized by statute to adopt rules, that the rule was duly adopted according to law and in compliance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and of this chapter.

(d) (No change.)

1:30-6.2 Time for filing notice of adoption

(a) No notice of adoption, other than that for an emergency rule, organizational rule, or a Federally required rule, shall be accepted for filing until either 60 days after the [submission] **publication** of the notice of proposal by the Office of Administrative Law [to the Senate and Assembly] or the passage of whatever comment period is established under N.J.A.C. 1:30-5.4(a), whichever is later.

(b) Any notice of adoption submitted for filing shall be reviewed by the Office of Administrative Law **within** not more than five business days after the submission deadline for notices of adoption for the issue of the New Jersey Register for which the notice was submitted. Any notice of adoption [which] **that** is found to be in non-compliance with N.J.S.A. 52:14B-1 et seq., and [the rules contained in] this chapter shall be subject to the provisions of N.J.A.C. 1:30-1.12.

(c) If a **notice of proposal** has not been adopted and filed with the OAL within one year from the date the notice of proposal was published in the [New Jersey] Register, or within 18 months of such date in accordance with N.J.A.C. 1:30-6.3(e), the **notice of proposal** shall expire[s]. Before the proposed rule amendment, repeal, or reoption can be adopted, the agency must resubmit the notice of proposal for publication in the Register and must comply again with the notice and opportunity to be heard requirements of the Act.

1:30-6.3 Variance between the rule as proposed and as adopted

(a) (No change.)

(b) As used in this section, "substantial changes" means any changes to a proposed rule that would significantly:

1. Enlarge or curtail who and what will be affected by the proposed [rule] **rulemaking**;

2. Change what is being prescribed, proscribed, or otherwise mandated by the [rule] **rulemaking**; or

3. Enlarge or curtail the scope of the proposed [rule] **rulemaking** and its burden on those affected by it.

(c) Upon making a determination that it would be appropriate to make substantial changes to a proposed [rule] **rulemaking** upon adoption, an agency may submit a public notice setting forth the proposed changes to the Office of Administrative Law for publication in the [New Jersey] Register. The public notice shall be submitted to the Office of Administrative Law in accordance with the submission deadlines for notices of proposal established pursuant to N.J.A.C. 1:30-1.14. The public notice shall include:

1.-5. (No change.)

6. The text of the originally proposed rule subject to the new proposed changes, specifically indicating the proposed additions and/or deletions of the new proposed changes.

(d) An agency submitting a public notice under (c) above shall comply with the requirements for notice, in addition to publication in the [New Jersey] Register, set forth in N.J.A.C. 1:30-5.2(a)3 through 6. The publication of the notice on the agency's Internet website pursuant to N.J.A.C. 1:30-5.2(a)5 shall occur no later than the date of publication of the notice in the [New Jersey] Register. Such agency shall also provide a comment period of **at least** 60 days from the date the public notice is published in the [New Jersey] Register in which interested parties may present their views on the new proposed changes. Upon the conclusion of the [60-day] public comment period, the agency may proceed with a notice of adoption in accordance with the provisions of [N.J.A.C. 1:30-6] **this subchapter**. As part of the notice of adoption, the agency shall include an [appropriately-headed] **appropriately headed** section devoted to the substantial changes contained in the public notice, listing all parties submitting comments concerning the provisions of the proposed rule changes contained in the public notice, summarizing the content of the submissions that are related to the proposed rule changes contained in the public notice, and providing the agency's response to the data, views, and arguments contained in the relevant submissions.

(e) A notice of proposal that includes a public notice pursuant to (c) and (d) above shall expire 18 months after the date of publication of the notice of proposal in the [New Jersey] Register.

(f) Where the changes between the rule as proposed and as adopted are not substantial as defined in (b) above, the changes shall not prevent the adopted rule from being accepted for filing. Changes [which] **that** are not substantial include:

1. (No change.)

2. Language or other changes, whose purpose and effect is to clarify the **notice of proposal**; and

3. (No change.)

1:30-6.4 Expiration date for adopted rule

(a) Every adopted or readopted chapter in the New Jersey Administrative Code shall expire seven years after the chapter's original or reoption effective date, unless a sooner expiration date is established in accordance with (g) below; a sooner or later expiration date is required pursuant to the statute authorizing the chapter; or no expiration date is required pursuant to (c) below. All notices of adoption filed with the OAL shall include the expiration date(s) of the rules affected by the **notice of adoption**.

(b) Expiration dates shall be fixed at the chapter level. An adopted new chapter shall have an expiration date of no more than seven years from the chapter's effective date.

(c)-(e) (No change.)

(f) An expiration date shall remain effective, irrespective of any subsequent amendments to the rules, short of a complete repeal and promulgation of the whole chapter.

1. Any notice of adoption of an amendment to a chapter shall include the expiration date [which] **that** has been established for the chapter.

(g) In order to maintain the effectiveness of a chapter [of rules], the [rules] **chapter** must be duly proposed for reoption, adopted, and filed on or before the chapter expiration date, or readopted through the notice of reoption process set forth in (h) below. Upon the filing of a notice of proposed reoption, the expiration date of the subject chapter shall

be extended for 180 days, if such notice is filed with the [Office of Administrative Law] **OAL** on or before the chapter expiration date. If the chapter expiration date falls on a Saturday, Sunday, or legal holiday, the 180-day expiration date extension shall take effect if the filing of the notice of proposed readoption occurs no later than the next business day after the expiration date. The readopted rules are effective upon filing with the [Office of Administrative Law] **OAL**.

1. (No change.)

2. Any amendments **or changes** to readopted rules are effective upon publication of either:

i.-ii. (No change.)

(h) In the case of a readoption without changes to the existing chapter, or a readoption with technical changes as approved by the [Office of Administrative Law] **OAL**, an agency may continue in effect an expiring chapter for a seven-year period by filing a public notice (hereinafter, “a notice of readoption”) with the [Office of Administrative Law] **OAL** for publication in the [New Jersey] Register at least 30 days prior to the expiration date of the chapter. If a notice of readoption is filed with the [Office of Administrative Law] **OAL** less than 30 days prior to the chapter expiration date, the notice will not be published and the filing of the notice will not change the chapter expiration date; in order to readopt the chapter that was the subject of such notice, the readoption of the chapter must be proposed and adopted in accordance with (g) above. The notice of readoption shall include the citation for the chapter; a general description of the chapter; the specific legal authority under which the chapter is authorized; the name and title of the individual, or the name of the entity, authorizing the readoption; the effective date of the readoption; **the effective date of the technical changes, if any**; and the new expiration date of the chapter. The notice of readoption shall be effective upon filing with the [Office of Administrative Law] **OAL**, and the new chapter expiration date shall be calculated from the date of filing of the notice of readoption. As used in this subsection, “technical [amendments] **changes**” means [amendments] **changes** to: correct spelling, grammar, and punctuation; correct codification; update contact information; or correct cross-references. The agency shall also publish the notice of readoption on the agency’s Internet website, no later than the date of publication of the notice in the [New Jersey] Register.

1. In the case of a published notice of proposed readoption of a chapter, with or without amendments, that has not been adopted by the promulgating agency, the notice of readoption process set forth in this subsection shall not be used by the promulgating agency to supersede the notice of proposed readoption, or the readoption portion of a notice of proposed readoption with amendments. In order to readopt the chapter subject to the notice of proposed readoption, with or without amendments, the promulgating agency shall submit a notice of adoption of the proposed readoption to the [Office of Administrative Law] **OAL** for publication in the [New Jersey] Register prior to the chapter’s expiration date.

2. In the case of a rule or amendment that, pursuant to specific statutory authority, was adopted without a **notice of proposal** and became effective upon submission to the [Office of Administrative Law] **OAL** for a period of time set forth in the authorizing statute, and for which the authorizing statute prescribes that continuation of the rule or amendment beyond the time period shall be accomplished through readoption, the notice of readoption process set forth in this subsection shall not be used by the promulgating agency in place of a **notice of proposal** and a **notice of adoption** of the rule’s or amendment’s initial readoption, in accordance with (g) above, to give the rule or amendment effect beyond the statutory time period.

(i) In the case of a proposed readoption of an expiring chapter with [substantive] **substantial** amendments, an agency may continue the expiring chapter for a seven-year period by duly proposing the readoption with [substantive] **substantial** amendments and readopting the chapter prior to its expiration. As used in this subsection, “[substantive] **substantial** amendments” means any amendments that are not technical [amendments] **changes** as defined in (h) above.

(j) Any readoption of rules [which] **that** is proposed and could be adopted prior to their expiration date under (g) and (i) above, but is not filed for adoption with the **OAL** until after the [rules’] expiration date of

the rules, shall be considered new rules, which are effective upon publication of the notice of adoption in the Register. The new expiration date shall be calculated from the date of publication, **not the date of filing with the OAL**.

(k) Any proposed readoption of rules [which] **that** expired before filing of the notice of proposal shall be considered proposed new rules.

1:30-6.5 Emergency rule adoption and concurrent proposal

(a) Any agency adopting an emergency rule pursuant to N.J.S.A. 52:14B-4(c) shall comply with the requirements of the adoption [procedure] **process set forth in N.J.A.C. 1:30-6.1**. The documents to be filed for an emergency rule adoption shall include:

1. A Certificate of Proposal, Adoption, and Promulgation (form **OAL [APF-[date]] APF-(year)-(version) (for example, Form OAL APF-17-1)**) signed by the agency head adopting the emergency rule;

2. A written summary of the subject matter of the emergency rules, which includes a finding that there is an imminent peril [which] **that** necessitates emergency proceedings; the basis for the finding; and social and economic factors [which] **that** bear upon the finding;

3. A signed statement from the Governor concurring as to the existence of an imminent peril [which] **that** justifies the emergency rulemaking proceeding; and

4. (No change.)

(b) (No change.)

(c) Upon filing with the [Office of Administrative Law] **OAL**, the **OAL** shall transmit [the Certificate of Proposal, Adoption and Promulgation,] the Governor’s signed statement[,] and a copy of the emergency [rule] **rulemaking** to the President of the Senate and the Speaker of the General Assembly.

(d) To continue the provisions of an emergency rule beyond the statutory 60-day period of emergency (see N.J.S.A. 52:14B-4(c)), the agency may propose the provisions of the emergency rule in a notice of proposal, which is filed with the **OAL** at the same time that the emergency adoption is filed. The notice of emergency adoption shall state that the rule is being proposed concurrently. The concurrent **notice of proposal** shall comply with N.J.A.C. 1:30-5.1 and may be adopted after the comment period. The adoption of the concurrent **notice of proposal** shall be effective upon timely filing of the notice of adoption with the **OAL**. As used in the preceding sentence, “timely” means on or before the expiration date of the emergency rule. Any changes to the readopted rule shall be effective upon publication of the notice of adoption.

(e) An adoption of a concurrent **notice of proposal** filed after the expiration of the emergency rule shall be effective upon publication in the Register.

(f) (No change.)

(g) An agency shall publish on its Internet website, a summary of any emergency rule adopted pursuant to this section, and the statement of reasons for the agency’s finding that an imminent peril exists. The website publication shall occur on the date the emergency rule is filed with the Office of Administrative Law. An agency shall publish the notice of emergency adoption and, if applicable, concurrent **notice of proposal** on the agency’s Internet website, no later than the date of publication of the notice in the New Jersey Register.

1:30-6.6 Effective date and promulgation of adopted rule

(a) The following rules are effective upon filing with the [Office of Administrative Law] **OAL**:

1.-3. (No change.)

4. Any concurrent rule, the adoption of which is filed prior to the expiration of the emergency rule.

(b) Any [other] adopted rule **other than as listed at (a)1 through 4 above** is effective upon publication in the [New Jersey] Register.

1:30-6.7 Timely filing of notice of adoption

In order to avoid the expiration of a chapter or a proposed rulemaking, or to avoid a break in effectiveness between an emergency adoption and the adoption of a concurrent **notice of proposal**, a notice of adoption shall be filed on or before the expiration date of the chapter, **notice of proposal**, or emergency adoption. If such date falls on a

Saturday, Sunday, or legal holiday, the filing shall occur no later than the next business day after the expiration date.

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules

Proposed Amendment: N.J.A.C. 10A:71-3.53

Authorized By: New Jersey State Parole Board, Samuel J. Plumeri, Jr., Chairman.

Authority: N.J.S.A. 30:4-123.48.d and P.L. 2017, c. 235.

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

Proposal Number: PRN 2018-027.

Submit comments by May 18, 2018, to:

Steven Tallard
Interim Executive Director
New Jersey State Parole Board
PO Box 862
Trenton, NJ 08625-0862
Fax: 609-292-4493
E-mail: SPB-RulemakingComments@spb.nj.gov

The agency proposal follows:

Summary

On September 13, 2017, P.L. 2017, c. 235 was enacted. This legislation concerned medical parole and amended, in part, N.J.S.A. 30:4-123.51c. The amendments become effective April 1, 2018. The legislation expands the eligibility of inmates for medical parole. Under current law, an inmate may be released on medical parole if the inmate is suffering from a "terminal condition, disease or syndrome," which is defined as a prognosis that the inmate has six months or less to live. In addition, the inmate must be found to be so debilitated or incapacitated by the terminal condition, disease, or syndrome that the inmate is permanently physically incapable of committing a crime if released on parole.

The legislation expands the eligibility for medical parole to inmates who have a permanent physical incapacity that renders him or her permanently unable to perform activities of basic daily living, results in the need for 24-hour care, and did not exist at the time of sentencing. In addition, the legislation permits medical parole for a permanent physical incapacity only if the State Parole Board (Board) determines that the conditions of the inmate's release would not pose a threat to public safety.

The legislation permits the Board to release an inmate on medical parole if the inmate meets the criteria designated under current law and the provisions of the legislation. The legislation requires the appropriate Board panel to state on the record the reasons for granting or denying medical parole.

Based on the enactment of P.L. 2017, c. 235, and the revisions to N.J.S.A. 30:4-123.51c, the Board proposes the following amendments to N.J.A.C. 10A:71-3.53:

The proposed amendments to N.J.A.C. 10A:71-3.53(a) provide for the inclusion of the phrase "permanent physical incapacity," where appropriate, and would require a finding that the conditions under which the inmate would be released would not pose a threat to public safety.

Proposed new N.J.A.C. 10A:71-3.53(d) provides for the definition of the term "permanent physical incapacity." As specified in the statute, "permanent physical incapacity" means a prognosis by the licensed physicians designated by the Commissioner that an inmate has a medical condition that: renders the inmate permanently unable to perform activities of basic daily living, results in the inmate requiring 24-hour care, and did not exist at the time of sentencing.

The proposed amendments to recodified N.J.A.C. 10A:71-3.53(e)1 and 2 provide for the inclusion of the phrase "permanent physical incapacity."

The proposed amendment to recodified N.J.A.C. 10A:71-3.53(l) requires the Board panel to note on the record the reasons for granting or denying medical parole.

The proposed amendment to recodified N.J.A.C. 10A:71-3.53(m)3 provides for the inclusion of the phrase "permanent physical incapacity."

The proposed amendments to recodified N.J.A.C. 10A:71-3.53(o) provides for the inclusion of the phrase "permanent physical incapacity," where appropriate, and language pertaining to the assessment as to whether the parolee who is no longer so debilitated or incapacitated by a permanently physical incapacity poses a threat to the public safety.

Throughout the section, amendments are proposed to update cross-references based on proposed new subsection (d).

The notice of proposal is excepted from the calendar requirement of N.J.A.C. 1:30-3.3(a) because the Board has provided a 60-day comment period pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments, which are based on enacted legislation, would expand eligibility for medical parole to those inmates determined to be suffering from a medical condition that results in the inmate meeting the definition of permanent physical incapacity. Upon review of an eligible inmate's case, it is possible that the inmate could be released on parole with specified conditions. As a larger group of inmates may become eligible for medical parole, it is possible that the workload of Department of Corrections and Board personnel may increase as eligible inmate cases must be processed for presentation of inmate cases to a Board panel for parole consideration and, if parole is granted, the inmate cases must be processed for parole release.

Economic Impact

The Board does not believe that additional funding is necessary to implement the proposed amendments. It is anticipated that the cost of implementing the proposed amendments will be met by the Board through the established budget process with funding presently allocated by the State.

The Department of Corrections may incur certain administrative costs for determining if inmates have a "permanent physical incapacity." The Department of Corrections currently funds medical costs for inmates, as well as the cost of their incarceration. If inmates eligible for medical parole are granted medical parole, the Department of Corrections may incur a reduction in its annual expenditures as the Department of Corrections would no longer be incarcerating the inmates and no longer be responsible for providing medical care. However, the economic impact cannot be readily identified.

Federal Standards Statement

The proposed amendments are not proposed under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under State statute that incorporates or refers to Federal law, standards, or requirements. An analysis of the amendments pursuant to Executive Order No. 27 (1994), P.L. 1995, c. 65 is, therefore, not required.

Jobs Impact

The proposed amendments pertain to the Board's execution of its statutory functions and responsibilities regarding medical parole. It is not anticipated that any jobs will be lost or created as a result of the proposed amendments.

Agriculture Industry Impact

The proposed amendments pertain to the Board's execution of its statutory functions and responsibilities regarding medical parole. The proposed amendments, therefore, will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments pertain to the Board's execution of its statutory functions