

(a)

OFFICE OF ADMINISTRATIVE LAW**Special Hearing Rules****Motor Vehicle Commission Cases****Readoption with Amendments: N.J.A.C. 1:13****Adopted Repeals: N.J.A.C. 1:13-14.1 and 14.2**

Proposed: January 5, 2015, at 47 N.J.R. 7(a).

Adopted: May 12, 2015, by Laura Sanders, Acting Director, Office of Administrative Law.

Filed: May 18, 2015, as R.2015 d.098, **without change**.

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

Effective Dates: May 18, 2015, Readoption;
June 15, 2015, Amendments and Repeals.

Expiration Date: May 18, 2022.

Summary of Public Comment and Agency Response:**No comments were received.****Federal Standards Statement**

A Federal standards analysis is not required because the contested case hearing procedures, of which the readopted rules and the adopted amendments and repeals are a part, are promulgated in implementation of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq., and are not subject to any Federal standards or requirements.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 1:13.

Full text of the adopted amendments follows:

1:13-1.1 Applicability

(a) The rules of this chapter shall apply to hearings transmitted by the Motor Vehicle Commission (MVC) except fatal accident cases, which shall be conducted in accordance with N.J.S.A. 39:5-30(b) and (e) and N.J.A.C. 1:13-14.5.

(b) (No change.)

1:13-4.1 Agency conference; failure to reach settlement

(a)-(c) (No change.)

(d) If settlement is not reached, MVC shall transmit the case to the Office of Administrative Law, including the documents set forth in N.J.A.C. 1:13-14.3.

1:13-10.1 Discovery in excessive points and persistent violator cases

(a) Discovery in excessive points and persistent violator cases shall be limited to the records of MVC with respect to the case. The records shall include a certified copy of the licensee's driving record abstract, relevant notices and orders of suspension, and certified proof of relevant mailings to the licensee.

(b)-(c) (No change.)

1:13-14.1 and 14.2 (Reserved)

1:13-14.3 Agency case

In excessive points and persistent violator cases, MVC's case will be based on the licensee's driving record, a prehearing conference report, relevant notices and orders of suspension, certified proof of relevant mailings to the licensee, and any other documentary evidence or legal briefs necessary.

1:13-14.5 Failure to appear

If, after appropriate notice, the licensee fails to appear at a preliminary fatal accident hearing scheduled pursuant to N.J.S.A. 39:5-30, the judge shall issue an order immediately suspending or continuing the suspension of the licensee's driving privileges. Thereafter, the provisions of N.J.A.C. 1:13-14.4 shall apply.

(b)

OFFICE OF ADMINISTRATIVE LAW**Rules for Agency Rulemaking****Use of Electronic Technologies in Rulemaking****Adopted Amendments: N.J.A.C. 1:30-1.2, 1.9, 3.4, 4, 5, 6.1, 6.3, 6.4, and 6.5****Adopted New Rule: N.J.A.C. 1:30-2.10**

Proposed: November 17, 2014, at 46 N.J.R. 2221(a).

Adopted: March 9, 2015, by Laura Sanders, Acting Director, Office of Administrative Law.

Filed: May 21, 2015, as R.2015 d.102, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:14F-5.f and P.L. 2013, c. 259.

Effective Date: June 15, 2015.

Expiration Date: June 14, 2020.

Summary of Public Comments and Agency Responses:

COMMENT: Alice Hayes Taylor objected to the inclusion of subsection (d) in proposed N.J.A.C. 1:30-2.10. The proposed subsection is outside the scope of both N.J.A.C. 1:30-2, Rulemaking Generally, and the "agency rulemaking" subject of the chapter. With the exception of a portion of proposed paragraph (d)2 regarding rulemaking and rulemaking petitions, the language of the subsection does not belong in the chapter.

Proposed paragraph (d)1 relates to documents related to N.J.S.A. 47:1A-1 et seq., commonly known as the Open Public Record Act, or OPRA. This is clearly outside the scope of "agency rulemaking." Proposed paragraph (d)2 requires posting of public hearing notices, publicity documents, press releases, and final and non-confidential agency reports. Although there may be public hearing notices or press releases related to rulemaking, proposed paragraph (d)2 does not limit itself to rulemaking-related records. Proposed paragraph (d)3 requires posting of all of the agency's permits, fees, violations, penalties, deadlines, processing times, and appeals procedures. While an agency does promulgate rules related to many of these topics, the documents themselves do not relate to rulemaking in any way.

Although the Legislature deemed it appropriate to include the requirement that an agency post non-rulemaking information on its website, the language is not appropriate in the Office of Administrative Law's (OAL's) rules, as proposed. Accordingly, proposed subsection (d) should not be adopted and the Administrative Procedure Act should be left to stand on its own, with regard to those topics. The language the OAL proposes in subsection (d) is not interpretive, nor does it clarify the statutory requirements; instead, it is taken directly from N.J.S.A. 52:14B-3. Accordingly, it is not necessary in the agency's rules. The requirements can be enforced based upon the statute alone. While it may be convenient to include the non-rulemaking documents in the same rules as the requirement to post rulemaking documents, the inclusion is improper.

RESPONSE: The OAL agrees that those portions of proposed N.J.A.C. 1:30-2.10(d) not pertaining to the Internet website publication of rulemaking-related documents are outside the scope of the chapter, as unrelated to the rulemaking process. The requirements pertaining to such documents do stand alone as set forth in N.J.S.A. 52:14B-3. The OAL informed State agencies of the requirements through an advisory issued following the enactment of P.L. 2013, c. 259 and again through the notice of proposal. Upon adoption, the OAL is revising N.J.A.C. 1:30-2.10(d) to address only agency Internet website publication of rulemaking notices and petitions for rulemaking.

COMMENT: Jean Public asked to be placed on the OAL's electronic mailing list for copies of its rulemaking notices, and commented as follows:

"[W]hen you go to [the website] of most [New Jersey] agencies, they have no site immediately to be found that shows the proposals that they themselves are proposing to change the present status of [r]egulations. [T]hat is absolutely wrong. [A]ll websites needs to have proposals clearly identified on their main site.