

RULE ADOPTIONS

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

Adopted 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

Proposed: March 19, 2018, at 50 N.J.R. 1015(a).

Adopted: May 22, 2018, by Lisa James-Beavers, Acting Director, Office of Administrative Law.

Filed: May 24, 2018, as R.2018 d.126, **without change**.

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

Effective Date: June 18, 2018.

Expiration Date: June 14, 2020.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being adopted 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.

Full text of the adoption follows:

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 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; that reviews such documents for compliance with this chapter and the Act; that maintains permanent records concerning rule promulgation; and 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)” 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 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 that, pursuant to N.J.S.A. 52:14B-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 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 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 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 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 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, 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 3:00 P.M., Monday through Friday, except for State holidays.

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

1. Rulemaking information (609) 689-4012;
2. Document filings (609) 689-4012; and
3. Administrative Code research (609) 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 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 3:00 P.M., Monday through Friday, except for State holidays.

1:30-1.10 Forms

From time-to-time the Office of Administrative Law may adopt as interagency statements the forms and formats 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 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 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 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 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.

(b) All proposals shall be assigned a proposed rule number (PRN) 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 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.

(b) Any rule activity or notice 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)1ii, 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.

(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 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) 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 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 52:14B-7(c) and (f), determine:

1. Whether any regulatory provisions found in an appendix shall be integrated and/or codified into the text of a rule; and
2. The location of an appendix to a rule in the New Jersey Register and the New Jersey Administrative Code; and
3. Whether an 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 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, 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 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, 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 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 that is requested;
 3. The problem or purpose 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 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" 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 rulemaking prescribes, proscribes, or otherwise mandates;
 - iv.-v. (No change.)
2. A "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;
3. An "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 a "Federal Standards Analysis"), which addresses whether the 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 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 is not applicable to the rulemaking.
 - ii. Rules that contain standards or requirements that do not exceed or are the same as Federal standards or requirements shall be accompanied by a statement 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 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 that exceed those required by Federal law;
- (2) A cost-benefit analysis that supports the agency's decision to impose standards or requirements that exceed those required by Federal law;
- (3) A discussion 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" 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" statement setting forth the nature and extent of the impact of the proposed rule on the agriculture industry;
7. A "Regulatory Flexibility Statement" (or "Regulatory Flexibility Analysis"):
 - i. All rules that impose reporting, recordkeeping, or other compliance requirements on small businesses shall include a regulatory flexibility analysis that describes the methods utilized to minimize any adverse economic impact on small businesses.
 - ii. "Small business" means any business that is resident in New Jersey, independently owned and operated, not dominant in its field, and that employs fewer than 100 full-time employees.
 - iii. Rules that do not impose reporting, recordkeeping, or other compliance requirements on small businesses shall be accompanied by a regulatory flexibility statement that indicates that no such requirements are imposed, and the basis for that finding.
 - iv. Rules 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" that contains a description of the types and an estimate of the number of housing units to which the rulemaking will apply, and a description of the estimated increase or decrease in the average cost of housing that will be affected by the rulemaking. As used in this paragraph, "types" means housing groups distinguished by the following categories: housing reserved for occupancy by very low-, low and moderate-, and middle-income households, respectively; single-family, two-family, and multi-family housing; and rental housing and for-sale housing.
 - i. An analysis under this paragraph shall not include the descriptions required under (c)8 above if the proposing agency finds that the rulemaking would impose an insignificant impact on the affordability of housing and there is an extreme unlikelihood that the 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 analysis;
 9. A "Smart Growth Development Impact Analysis" that contains a description of the types and an estimate of the number of housing units

to which the rulemaking will apply, a description of the estimated increase or decrease in the availability of affordable housing that will be affected by the rulemaking, and a description as to whether the 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 and moderate-, and middle-income households, respectively; single-family, two-family, and multi-family housing; and rental housing and for-sale housing.

i. An analysis under this paragraph shall not include the descriptions required under (c)9 above if the proposing agency finds that the rulemaking would impose an insignificant impact 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 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 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 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;

(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)5 above shall satisfy the additional publicity requirements of this paragraph for that notice of proposal.

(b) Additional notice of the 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 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 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.

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 that shall afford interested parties the opportunity to attend.

(e) If the hearing pertains to an agency 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.

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

iii. 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 rulemaking. A copy of the signed Certificate of Proposal, Adoption, and Promulgation (form OAL 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/or rejecting the public comments.

3. A description of any public hearing or other proceeding 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 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 rulemaking, the agency may voluntarily seek the assistance of the OAL in accordance with the following provisions. The procedure to negotiate

a rule established 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 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 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 the proposed rulemaking is adopted "without change" from the proposal, 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 rulemaking or the 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 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, in which case this portion of the notice would be a Summary of 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 that affect whether or not the rule exceeds Federal standards or requirements or 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-(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 publication of the notice of proposal by the Office of Administrative Law 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 that is found to be in non-compliance with N.J.S.A. 52:14B-1 et seq., and 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 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. Before the proposed rule amendment, repeal, or readoption 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 rulemaking;

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

3. Enlarge or curtail the scope of the proposed 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 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 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 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 Register. Such agency shall also provide a comment period of at least 60 days from the date the public notice is published in the Register in which interested parties may present their views on the new proposed changes. Upon the conclusion of the public comment period, the agency may proceed with a notice of adoption in accordance with the provisions of this subchapter. As part of the notice of adoption, the agency shall include an 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 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 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 readoption 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 repromulgation of the whole chapter.

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

(g) In order to maintain the effectiveness of a chapter, the chapter must be duly proposed for readoption, adopted, and filed on or before the chapter expiration date, or readopted through the notice of readoption process set forth in (h) below. Upon the filing of a notice of proposed readoption, the expiration date of the subject chapter shall be extended for 180 days, if such notice is filed with the 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 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 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 OAL for publication in the Register at least 30 days prior to the expiration date of the chapter. If a notice of readoption is filed with the 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 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 changes" means 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 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 OAL for publication in the 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 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 substantial amendments, an agency may continue the expiring chapter for a seven-year period by duly proposing the readoption with substantial amendments and readopting the chapter prior to its expiration. As used in this subsection, "substantial amendments" means any amendments that are not technical changes as defined in (h) above.

(j) Any readoption of rules 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 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 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 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-(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 that necessitates emergency proceedings; the basis for the finding; and social and economic factors that bear upon the finding;

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

4. (No change.)

(b) (No change.)

(c) Upon filing with the OAL, the OAL shall transmit the Governor's signed statement and a copy of the emergency 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 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 adopted rule other than as listed at (a)1 through 4 above is effective upon publication in the 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.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH AND WILDLIFE

Notice of Administrative Change

Marine Fisheries

Modification of Commercial Cobia Possession Limit and Recreational Cobia Minimum Size and Possession Limit, Modification of Recreational Black Sea Bass Season and Possession Limit, and Modification of Summer Flounder Season

N.J.A.C. 7:25-18.1

Take notice that, pursuant to N.J.A.C. 7:25-18.1(p), the Commissioner of the Department of Environmental Protection, with the approval of the New Jersey Marine Fisheries Council (Council) at its April 5, 2018 meeting, has modified the commercial and recreational possession limits for cobia, the recreational minimum size for cobia, the recreational black sea bass seasons and possession limits, and the summer flounder recreational season. These actions have been taken to