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**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

Rulemaking Checklist for Rule Managers

As a Rule Manager, you are responsible for taking a rule from conceptual stage through proposal to promulgation (the publication of the adoption). This Rulemaking Checklist **[link to checklist]** is an easy-to-follow guide designed to ensure that you complete all the necessary steps for rule promulgation. Just check off each task as it is completed.

Another important task in the rulemaking process is to continually update the Rule Tracking Database **[link to database]**. The database not only provides an "at a glance" view of the status of all the rules, but it is also the tool for generating the various memos that are part of the rulemaking process. In addition, it contains the instructions for preparing and publishing the statutorily required additional notice of rule proposals. The database contains a link to a user manual, which will help you in filling in the fields of the rule record in the database that you will create for each rulemaking you undertake.

When used together, the Rulemaking Checklist and the Rule Tracking Database will help you proceed through the rulemaking process in a focused and effective way.

1. Conceptual Approval

- ❑ Prepare Hot Issue for Commissioner concerning the need for and purpose of the rulemaking.

The Hot Issue should contain the following information:

- Rule title and N.J.A.C. citation
 - Issue statement: Explain what the rulemaking is, and why it is needed
 - Description of rule action
 - Tentative schedule: Include schedule for a public involvement process (if applicable), proposal and adoption dates
 - Anticipated sources of controversy
 - Policy Issues
 - Legal Issues
 - Contact: Name and phone number of Rule Manager
 - Action needed by Commissioner: Approval to proceed with rulemaking
- ❑ Transmit an electronic version of the Hot Issue through the Assistant Commissioner's office for placement on the weekly Hot Issue report.

2. Proposal Launch Process

- ❑ Prepare a memo (or e-mail) for your Director to send to the Director of the Office of Legal Affairs, recommending members for the rule team based on their knowledge of the rule subject, experience in implementing the rule, commitment to work on the rule until completed (proposal through adoption), ability to work well on a team, and experience with rulemaking.
 - The memo (or e-mail) must request assignment of a Legal Specialist from the Office of Legal Affairs to the rule team, and ask that the Office of Legal Affairs request assignment of a DAG to the rule team
- ❑ Create a rule record for the rulemaking in the rule tracking database.
- ❑ Schedule and hold a proposal launch meeting. As an agenda for the launch meeting, generate a draft proposal launch memo from the rule tracking database. Launch meeting attendees must include the Director and the rule team (including the Legal Specialist and DAG).

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- ❑ Update information in the rule tracking database.
- ❑ Generate a final proposal launch memo from the database and e-mail it on the day after the launch meeting to:
 - The rule team (including the Legal Specialist and DAG)
 - The Director of the Office of Legal Affairs
 - The program director responsible for the rule
 - The Assistant Commissioner responsible for the rule
- ❑ Transmit an electronic version of a Hot Issue describing the launch of the rule proposal through the Assistant Commissioner's office for placement on the weekly Hot Issue report (see step 1 above for basic content of Hot Issue).

3. Public Involvement (if applicable) Prior to Proposal

- ❑ Decide what type of public involvement to undertake (e.g., a “Notice of Opportunity for Public Comment on Potential Rulemaking” to be published in the NJ Register; a series of stakeholder meetings).
- ❑ If the public involvement is a notice to be published in the NJ Register:
 - Draft the notice for review by the Legal Specialist, using correct NJ Register format for a public notice and including date for close of comments
 - Have notice signed by Assistant Commissioner
 - Submit to Legal Specialist for filing for the NJ Register
- ❑ If the public involvement will be stakeholder meeting(s):
 - Arrange for meeting room(s)
 - Establish date(s) and time(s) of meeting(s)
 - Develop list of invitees
 - Decide on method(s) of notification of meeting (e.g., through NJ Register notice, newspaper notice, mailing lists, DEP newsletter); then notify invitees
 - Arrange for setup of meeting room including seating, projector, flipchart/markers
- ❑ Update information in the rule tracking database.

4. Proposal Writing

- With the rule team, including the Legal Specialist and the DAG, write a draft proposal document. This document (double-spaced, single-sided, paginated, in TimesRoman 12 point type, with one-inch margins) includes:
 - Caption
 - Date, time, place of public hearing (if applicable)
 - Address (of Legal Specialist) and deadline for submittal of written comments
 - Rule summary (including brief discussion of public involvement, if any, prior to proposal [see Step 2 above], issues raised, and how addressed by the proposal)
 - Impact statements, in the following order:
 - ✓ Social impact
 - ✓ Economic impact
 - ✓ Environmental impact
 - ✓ Federal standards analysis
 - ✓ Jobs impact
 - ✓ Agricultural industry impact
 - ✓ Regulatory flexibility analysis
 - ✓ Smart growth
 - Rule text. Deletions from existing rule are shown by square brackets (e.g., [thus]). Additions are shown by underline (e.g., thus). Always show the deleted text ahead of the added text.
 - Executive Order 27 certification, date and Commissioner signature lines
- Obtain approval of the proposal document (which has been reviewed and approved by all members of the team, including the Legal Specialist and the DAG) from program managers as necessary (e.g., Assistant Directors and Directors).
- Identify cross-program issues, including those affecting enforcement (e.g., penalties) and management and budget (e.g., fees). Send issues/proposal document to these program(s) for review and comment as applicable.
- Revise draft proposal as necessary, keeping the Legal Specialist and DAG advised of any changes.
- Update information in the rule tracking database.

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- ❑ Send revised proposal document to the Assistant Commissioner for review and comment.
- ❑ Revise the proposal document as necessary, keeping the Legal Specialist and DAG advised of any changes.
- ❑ Update information in the rule tracking database.
- ❑ Decide on number and location(s) of public hearing concerning the proposal, if applicable:
 - Include this information in the proposal (date, time, place)
 - Reserve location(s) and arrange for set-up of room
 - Arrange for stenographer for hearing(s), including delivery of transcripts, or for tape recording of hearing(s). (Recommended that you bring to the hearing(s) a good-quality tape recorder as back-up if using stenographer.)
- ❑ Generate the Proposal Briefing Memo and the Governor's Proposal Briefing Memo from the rule tracking database.

5. Finalizing Proposal for Filing

- ❑ Send the Proposal Briefing Memo, the Governor's Proposal Briefing Memo and the revised draft proposal document to the Legal Specialist for final review.
 - Provide the documents at least 15 days prior to target NJ Register filing deadline, so that there is time for the Legal Specialist to review them and return comments to you if needed, and for you to return revised documents in hard copy and electronically to the Legal Specialist in time to meet the mandatory 10-day deadline for the Governor's office review.
 - The Legal Specialist will transmit the Governor's Briefing Package (Governor's Proposal Briefing Memo plus proposal document) to the Governor's Office and to the Smart Growth Ombudsman's Office, and the Commissioner's Signature Package (Proposal Briefing Memo plus proposal document) to the Commissioner through the Counselor to the Commissioner.
- ❑ Transmit an electronic version of a Hot Issue describing the rule proposal through the Assistant Commissioner's office for placement on the weekly Hot Issue report (see step 1 above for basic content of Hot Issue).
 - For the week of the target NJ Register filing deadline, the Legal Specialist will prepare a Hot Issue to give a heads-up that the proposal is to be filed.

- Once the Governor's Office approves the proposal and the Commissioner signs it, the Legal Specialist will transmit the proposal to the Office of Administrative Law for publication in the NJ Register.

6. Post Proposal Filing Responsibilities

- Address comments/questions, if any, from the Office of Administrative Law (OAL) regarding the filed proposal.
 - The comments will be provided to the Legal Specialist by OAL within several days after the proposal is filed. The Legal Specialist will relay them (by e-mail or memo) to you and the DAG. The deadline by which the comments must be addressed is usually a day or two after they are received.
 - To address the comments, develop a memo addressing the comments point-by-point, with help as necessary from the Legal Specialist and the DAG.
 - Submit the memo to the Legal Specialist, who will review it, discuss any revisions needed to it with you, and then transmit it to the OAL.
- Once the rule proposal has been filed with the OAL, prepare and publish the statutorily mandated additional notice of proposal. (Note: If you do not timely publish the additional notice, the proposal cannot be adopted. You will have to either re-open the comment period or re-publish the proposal.)
 - The additional notice must be published by the date the proposal will appear in the NJ Register. (The absolute latest it can be published is 30 days before the close of the comment period.)
 - The additional notice must be published in the following places:
 - ✓ On the rules page of the Department's website
 - ✓ Faxed to the news media maintaining a press office in the Statehouse
 - ✓ As a legal ad in a sufficient number/distribution of newspapers to reach those affected by/interested in the proposal.
 - Follow (carefully) the instructions for preparing and publishing the additional notice that are found in the rule tracking database. The instructions include a form for the additional notice, as well as the fax cover sheet to be used to send the notice to the Statehouse media.

- Promptly and carefully proofread the additional notices as posted on the DEP website and as published in the newspapers.
 - Promptly send proof of publication of the additional notices (including the DEP website notice, affidavits of publication or copies of the published newspaper ads, and copies of the fax cover sheets showing transmission confirmation) to the Legal Specialist. These proofs are a mandatory part of the official rule docket file that the Legal Specialist maintains for the rulemaking.
- Proofread the proposal promptly when it is published in the NJ Register. Immediately bring any errors to the attention of the Legal Specialist, so that he or she can determine with the Office of Administrative Law if any corrective action needs to be taken before the adoption.
 - Confirm the public hearing arrangements, including delivery of transcripts.
 - Attend and/or preside at the public hearing. If anyone submits written comments at the hearing, forward them promptly to the Legal Specialist. Also ensure that a copy of the transcript from the public hearing(s) is provided promptly on receipt to the Legal Specialist.

7. Adoption Launch Process

- Re-convene the rule team (including the Legal Specialist and DAG) that worked on the proposal.
- Update the rule record for the rule in the rule tracking database.
- Schedule and hold an adoption launch meeting. As an agenda for the launch meeting, generate a draft adoption launch memo from the rule tracking database. Launch meeting attendees must include the Director and the rule team (including the Legal Specialist and DAG).
- Update information in the rule tracking database.
- Generate a final adoption launch memo from the database and e-mail it on the day after the launch meeting to:
 - The rule team (including the Legal Specialist and DAG)
 - The Director of the Office of Legal Affairs
 - The program director responsible for the rule
 - The Assistant Commissioner responsible for the rule

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- Transmit an electronic version of a Hot Issue describing the launch of the rule adoption through the Assistant Commissioner's office for placement on the weekly Hot Issue report (see step 1 above for basic content of Hot Issue).

8. Adoption Writing

- With the rule team, including the Legal Specialist and the DAG, write a draft adoption document. This document (double-spaced, single-sided, paginated, in TimesRoman 12 point type, with one-inch margins) includes:
 - Caption
 - Introductory paragraph
 - Summary of Hearing Officer Recommendation and Agency Response (if public hearing was held), including boilerplate language about reviewing public hearing record in accordance with applicable law by contacting the Office of Legal Affairs, Attn. DEP Docket No., etc.
 - Summary of Public Comments and Agency Responses
 - ✓ List commenters alphabetically by last name of person who signed comment letter (rather than by organization), and include affiliation if comment submitted on behalf of an organization, business, or government agency.
 - ✓ Number the commenters in the list consecutively.
 - ✓ Organize and group comments by issue or by rule section, as appropriate, and include section headings for the grouped comments.
 - ✓ Number the comments consecutively.
 - ✓ After each comment, include in parentheses the number(s) of the commenter(s) who made the comment. Separate the commenter numbers in the parentheses with commas and spaces, as, for example: (1, 2, 7-10, 12)
 - Summary of Agency-Initiated Changes (if any). List the change(s) being made to the rule text on adoption, including the N.J.A.C. citation of the provision being changed and an explanation for the change. The explanation must show that based on the proposal summary and/or the overall context/structure of the rules the change is not so substantial as to effectively destroy the value of the original proposal.

- Federal Standards Analysis. Generally, use the same FSA that was included in the proposal; however, ensure references to “proposed” are replaced by “adopted”. Note that comments received regarding the FSA should be addressed in the responses, not in the FSA. In the rare case that the FSA must be modified (for instance, to analyze a section of the rule not discussed in the proposal FSA), include a note at the start of the adoption FSA explaining what and where the additional analysis is within the FSA.
 - Rule text sections in which changes are being made on adoption. Deletions from the proposed rule are shown by square brackets with asterisks, (e.g., *[thus]*). Additions are shown by underline with asterisks (e.g., *thus*). Always show the deleted text ahead of the added text.
 - Executive Order 27 certification, date and Commissioner signature lines.
- Obtain approval of the adoption document (which has been reviewed and approved by all members of the team, including the Legal Specialist and the DAG) from program managers as necessary (e.g., Assistant Directors and Directors).
 - Identify cross-program issues, including those affecting enforcement (e.g., penalties) and management and budget (e.g., fees). Send issues/adoption document to these program(s) for review and comment as applicable.
 - Revise draft adoption as necessary, keeping the Legal Specialist and DAG advised of any changes.
 - Update information in the rule tracking database.
 - Send revised adoption document to the Assistant Commissioner for review and comment.
 - Revise the adoption document as necessary, keeping the Legal Specialist and DAG advised of any changes.
 - Update information in the rule tracking database.
 - Generate the Adoption Briefing Memo and the Governor’s Adoption Briefing Memo from the rule tracking database.
 - Fill out Part II of the Office of Administrative Law Certificate of Proposal, Adoption, and Promulgation (APF form). Be sure to expressly list on the form in the “Public Notice for Proposal” box the names of the newspapers in which you published (and have proof of publishing) additional notice. NOTE: The APF form must be signed by the Commissioner

as proof of adoption. Without the signed form, the Office of Administrative Law will not accept the adoption for publication.

9. Finalizing Adoption for Filing

- Send the Adoption Briefing Memo, the Governor's Adoption Briefing Memo and the revised draft adoption document, and the completed APF form to the Legal Specialist for final review.
 - Provide the documents at least 15 days prior to target NJ Register filing deadline, so that there is time for the Legal Specialist to review them and return comments to you if needed, and for you to return revised documents in hard copy and electronically to the Legal Specialist in time to meet the mandatory 10-day deadline for the Governor's office review.
 - The Legal Specialist will transmit the Governor's Briefing Package (Governor's Adoption Briefing Memo plus adoption document) to the Governor's Office, and the Commissioner's Signature Package (Adoption Briefing Memo plus adoption document) to the Commissioner through the Counselor to the Commissioner.
- Transmit an electronic version of a Hot Issue describing the rule adoption through the Assistant Commissioner's office for placement on the weekly Hot Issue report (see step 1 above for basic content of Hot Issue).
 - For the week of the target NJ Register filing deadline, the Legal Specialist will prepare a Hot Issue to give a heads-up that the adoption is to be filed.
 - Once the Governor's Office approves the adoption and the Commissioner signs it, the Legal Specialist will transmit the adoption to the Office of Administrative Law for publication in the NJ Register.

10. Post Adoption Filing Responsibilities

- Address comments/questions, if any, from the Office of Administrative Law (OAL) regarding the filed adoption.
 - The comments will be provided to the Legal Specialist by OAL within several days after the adoption is filed. The Legal Specialist will relay them (by e-mail or memo) to you

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and the DAG. The deadline by which the comments must be addressed is usually a day or two after they are received.

- To address the comments, develop a memo addressing the comments point-by-point, with help as necessary from the Legal Specialist and the DAG.
 - Submit the memo to the Legal Specialist, who will review it, discuss any revisions needed to it with you, and then transmit it to the OAL.
- Proofread the adoption promptly when it is published in the NJ Register, and when the NJ Administrative Code update is published. Immediately bring any errors to the attention of the Legal Specialist, so that he or she can determine with the Office of Administrative Law if any corrective action needs to be taken.