

(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. 1:1-14.4 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.

15 days notice to the busy public is a horror with not enough time for anyone to assemble the information they need, get [in touch] with others to report on this change, and then make plans to speak or show up at a hearing on the matter. 30 days is a minimum. 60 days is even better. [W]hat is the real rush in giving such a short amount of time to the public? why? [I]t is known that many [New Jersey] citizens work 2 and 3 jobs and have [families] and time is a luxury so that they need time to respond.

[S]ome agencies like [New Jersey Division Fish and Wildlife] killing agency never respond to the [New Jersey] public. [T]hey respond [only] to their pal [stakeholders] who they have picked out and also respond to hunters and agribusinesses. [T]he rest of us get short shrift and critics are blackballed entirely.

[W]ith listserves, you need to recognize that for example [the New Jersey Division of Fish and Wildlife] has hunters signing up primarily for information so that the rest of the [New Jersey] 9 million population has no information on their doings at all. [T]hese unbalanced listserves produce unbalanced [government]. [T]he general public needs a [m]inimum of 30 days after a hearing date is set and 60 days would be even more beneficial.

[W]hen proposals come back with public comment, and you know you have controversial subjects, [I] have to wonder why agencies are allowed to count the comments. [W]e have [New Jersey Division of Fish and Wildlife] killing agency, a highly unbalanced agency of only wildlife killers and when those who do not share that view, their comments are not counted correctly or given any consideration. [F]or example 70% of the comments on a proposal [were] against the [New Jersey Division of Fish and Wildlife killing] agency proposal and this agency completely discounted the public comment and gave it no credence. [T]hat is an example of [corrupt New Jersey], as the [H]arvard study recently found of [New Jersey] being the most corrupt state in the union in [government].

[A]ll agencies should be using email as well as telephone and fax. [A]nd when any proposal is listed, all such methods of [communication] should be used: email, phone, fax and regular mail. [T]he public is entitled to use the most convenient. [T]his comment is for the public record."

RESPONSE: A review of the websites of the major rulemaking agencies indicates that access to posted notices of proposal was available either directly from an agency's home page or within a few readily identified links into the website.

The 15-day minimum public notice requirement for public hearings on proposed rulemakings is established by the Administrative Procedure Act, at N.J.S.A. 52:14B-4(a)(3). Of the 67 proposed rulemakings published from 2012 through 2014 on which public hearings were held subject to that minimum notice requirement, the notice provided for all but one of the hearings exceeded the minimum 15-day hearing notice, and the average hearing notice was 25 days. As a 60-day public comment period on proposed rulemakings has developed as the standard duration since the rulemaking calendar requirement became effective in 2001 (see N.J.S.A. 52:14B-3(4)), a commenter unable to attend a public hearing due to time constraints may still be able to express his or her views through the submission of written comment.

Notices of adoption, including those from the Division of Fish and Wildlife, Department of Environmental Protection, routinely include summaries of many comments in opposition to what the agency is proposing, and the agency's responses to the issues raised by those commenters. Whether an agency agrees with the positions taken by commenters is within the agency's discretion.

Public awareness of agency rulemaking actions should be improved by the ability of members of the public to sign onto an electronic mailing list to receive notice of proposed agency rulemaking actions, and the requirement for agencies to provide such notice as part of the rulemaking proposal process under N.J.S.A. 52:14B-4(a)(1).

N.J.S.A. 52:14B-4(a)(3) requires agencies to accept written comments on proposed rulemakings in e-mail form. Permitting comments to be submitted via fax or orally is within the proposing agency's discretion in determining what constitutes a "reasonable opportunity" under the statute to submit comments on a proposed rulemaking.

Federal Standards Statement

A Federal standards analysis is not required because adopted amendments and new rule are promulgated to implement rulemaking requirements of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and are not subject to any Federal standards or requirements.

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

SUBCHAPTER 1. GENERAL PROVISIONS

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.

...

"Electronic mailing list" means a computer program that allows agency website visitors, at their discretion, to subscribe to, or unsubscribe from, an e-mail discussion group or e-mail mailing list controlled by the agency, and which program enables the agency to automatically send e-mail messages to multiple e-mail addresses on the user-generated subscriber list.

...

"File" means the action whereby a copy of a document is received by the Division of Administrative Rules; notated with the date of receipt; entered into the registry; and thereafter accepted for publication by the Director. All documents accepted for publication shall be considered filed as of the date of receipt.

...

"Operative" means that the adopting agency shall enforce and the affected public shall obey the terms of an effective rule. Unless otherwise specified in the rule or notice of adoption of the rule, a rule becomes operative when effective.

...

"URL address" means a Uniform Resource Locator address, which 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.

1:30-1.9 Copies of documents; fees

(a) Any person may obtain copies of filed documents from the Division of Administrative Rules pursuant to the provisions of N.J.S.A. 47:1A-5.b.

(b) (No change.)

SUBCHAPTER 2. RULEMAKING GENERALLY

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. The complete and current text of each State law under which the agency is granted its authority, and the complete and current text of each rule that has been adopted by the agency, or that is proposed for, or is pending, agency adoption; or

2. One or more URL addresses, which provide visitors to the agency's website with a direct link to the complete and current text of the documents listed in (a)1 above.

(b) An agency shall make regular and timely updates to the full text documents and/or URL addresses posted on its Internet website pursuant to (a) above, and shall take any other reasonable action necessary to ensure that the posted documents and/or URL addresses accurately reflect, or are directly linked to, as the case may be, the most recent version of the associated law or rule, including any amendments or supplements thereto, or repeals thereof. The agency shall indicate on its Internet website, the frequency with which updates are made pursuant to this subsection.

(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 through any other reasonable means, of any nonfunctional URL address.

(d) In addition to the requirements in (a) above, each agency shall make *[the following]* available for public viewing, through publication on the agency's Internet website,* *and, as to (d)1 below, through any other means:

1. All final agency orders, decisions, and opinions, in accordance with N.J.S.A. 47:1A-1 et seq.;

2. All]* *all* of the agency's rulemaking *[and public hearing]* notices*[, publicity documents, press releases, final and non-confidential agency reports,]* and rulemaking petitions received by the agency*[; and]**.*

[3. A complete list of the agency's permits, fees, violations, penalties, deadlines, processing times, and appeals procedures.]

SUBCHAPTER 3. RULEMAKING CALENDARS

1:30-3.4 Calendar copies

(a) Each agency shall include, in that portion of its Internet website concerned with rulemaking, its rulemaking calendar and a notice of the availability of its rulemaking calendar for the fee established at (c) below. If an agency's Internet website does not feature a portion devoted to rulemaking, the calendar or notice of the availability of the rulemaking calendar shall be included in that portion of the website otherwise used for public notices and/or information.

(b) (No change.)

(c) Agencies shall charge a fee for copies of their rulemaking calendars in accordance with N.J.A.C. 1:30-1.9(a).

SUBCHAPTER 4. PETITION FOR RULEMAKING

1:30-4.1 Notice of petition for rulemaking

(a) An interested person may petition an agency to adopt a new rule or amend or repeal an existing rule. Such petition may be submitted to an agency through mail, e-mail, or, if designed to receive messages, electronic mailing list, or through any other means.

(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 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) (No change.)

(d) An agency shall publish on its Internet website each petition for rulemaking received, no later than the date of publication of the notice of receipt of the petition under (c) above.

1:30-4.2 Agency response to petition

(a)-(d) (No change.)

(e) An agency shall publish on its Internet website each notice of action on a petition for rulemaking, no later than the date of publication of the notice under (d) above.

1:30-4.3 Failure to respond to petition

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

(c) If the agency does not provide notice of a public hearing within 15 days of issuance of the Director's notice, the Director shall schedule a public hearing to be conducted by the Office of Administrative Law. Notice of that hearing shall be provided to the petitioner and the public at least 15 days prior to the hearing. Whether the hearing is conducted by the agency or the Office of Administrative Law, the agency shall publish notice of the hearing on its Internet website, at least 15 days prior to the hearing.

(d)-(f) (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.-8. (No change.)

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 comments and, if an agency intends to receive oral comments telephonically, the telephone number of the person(s) to receive such comments;

iv. An address to which comments may be submitted through the agency's e-mail system or, if designed to receive messages, electronic mailing list; and

v. If the agency chooses to accept comments by electronic facsimile, a facsimile telephone number (FAX number).

(c) (No change.)

(d) The notice of proposal shall include the full text of the proposed new rule or amendment, specifically indicating additions and/or deletions.

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. The OAL shall submit the notice, within two business days of receipt, to the Senate and the General Assembly;

2. (No change.)

3. The agency shall mail or e-mail either the notice of proposal, as filed, or a statement of the substance of the proposed action to:

i. Interested persons;

ii. Those persons who have made timely request of the agency for notice of its rulemaking actions; and

iii. Those persons on the agency's electronic mailing list or similar type of subscription-based e-mail service;

4. (No change.)

5. The agency shall publish the notice of proposal on its Internet website, no later than the date of publication of the notice in the New Jersey Register; and

6. The agency shall undertake an additional method of publicity other than publication in the Register. 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. (No change.)

ii. The additional method of publicity may be by:

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

(3) Distribution of a press release to the news media; or

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

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

(c) (No change.)

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

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

(d) An agency shall afford all interested persons a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing, on the proposed action, and shall fully consider all written and oral submissions, including any written submissions received by the agency through its e-mail systems or, if designed to receive messages, electronic mailing lists.

(e) An agency shall distribute a notice of pre-proposal to interested persons through the use of an electronic mailing list or similar type of subscription-based e-mail service, and make the notice available for

public viewing through publication on the agency’s Internet website, no later than the date of publication of the notice in the New Jersey Register.

(f) (No change in text.)

1:30-5.4 Opportunity to be heard

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

(d) To provide a full comment period, the agency shall accept all public comments postmarked or, if submitted by e-mail or through an electronic mailing list, bearing an e-mail sent date or list posting date within the designated comment period set forth in the notice of pre-proposal or notice of proposal, or as thereafter extended. If the designated comment period ends on a Sunday or postal holiday, the agency shall accept public comments postmarked through the next postal business day after the last day of the comment period.

(e) (No change.)

1:30-5.5 Public hearings

(a) (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)-(h) (No change.)

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 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. Any notice mailed or e-mailed pursuant to N.J.A.C. 1:30-5.2(a)3;
 - ii. Any notice distributed to the news media pursuant to N.J.A.C. 1:30-5.2(a)4; and
 - iii. (No change in text.)
- 2.-3. (No change.)

(b)-(d) (No change.)

SUBCHAPTER 6. PROCEDURE UPON ADOPTION

1:30-6.1 Notice of adoption

(a) When an agency adopts a proposed rule, the agency shall prepare a “notice of adoption” and submit the notice to the OAL. The notice of adoption shall comply with the requirements of this section.

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

(d) An agency shall also publish the notice of adoption on the agency’s Internet website, no later than the date of publication of the notice in the New Jersey Register.

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

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

(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 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. 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)-(f) (No change.)

1:30-6.4 Expiration date for adopted rule

(a)-(g) (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, 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 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 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; and the new expiration date of the chapter. The notice of readoption shall be effective upon filing with the Office of Administrative Law, 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” means amendments 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.-2. (No change.)

(i)-(k) (No change.)

1:30-6.5 Emergency rule adoption and concurrent proposal

(a)-(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 proposal on the agency’s Internet website, no later than the date of publication of the notice in the New Jersey Register.

(a)

**OFFICE OF ADMINISTRATIVE LAW
Organization of the Office of Administrative Law
Readoption with Amendments: N.J.A.C. 1:31**

Proposed: December 1, 2014, at 46 N.J.R. 2302(a).
Adopted: May 12, 2015, by Laura Sanders, Acting Director, Office of Administrative Law.

Filed: May 18, 2015, as R.2015 d.099, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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