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

Authorized By: Laura Sanders, Acting Director, Office of Administrative Law.

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

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

Proposal Number: PRN 2014-204.

Submit comments by January 16, 2015, to:

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The agency proposal follows:

**Summary**

The Office of Administrative Law (OAL) proposes amendments to the Rules for Agency Rulemaking, N.J.A.C. 1:30, along with a new rule to incorporate the amendments to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., enacted by P.L. 2013, c. 259 (the Act). The Act's amendments require State agencies to:

- Post on their Internet websites, or provide links to, their rules and each State law under which they are granted their authority;
- Publish on their Internet websites all final agency orders, decisions, and opinions; 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 a complete list of the agency's permits, fees, violations, penalties, deadlines, processing times, and appeals procedures;
- Provide for the submission of comments on rulemaking proposals and pre-proposals through e-mail or electronic mailing lists;
- Create an electronic mailing list to which website visitors may subscribe; and
- Distribute notices of proposed rulemakings and notices of pre-proposal to the electronic mailing list described above.

To implement these requirements, the OAL proposes amendments and a new rule, as follows:

N.J.A.C. 1:30-1.2, the chapter definitions section, is proposed for amendment to add the Act's definitions of "electronic mailing list" and "URL address."

New rule N.J.A.C. 1:30-2.10 is proposed to set forth the agency Internet posting requirements established under Sections 2 and 3 of the Act. Proposed subsection (a) requires each agency to post, in a visible and publicly-accessible location on the agency's Internet website, 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 one or more URL addresses, which provide visitors to the agency's Internet website with a direct link to the complete and current text of such laws and/or rules. Proposed subsection (b) requires agencies to make regular and timely updates to the posted laws, rules, and/or URL addresses, and to take any other reasonable action necessary to ensure that the posted documents accurately reflect, and/or URL addresses are directly linked to, the most recent version of the associated law or rule. Proposed subsection (c) requires an agency that posts one or more URL addresses pursuant to subsection (a) to regularly verify 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.

To comply with the requirements of Section 2 of the Act, reflected in proposed N.J.A.C. 1:30-2.10(a), (b), and (c), the OAL has opted to provide URL address links on its website to the statutes under which it is granted authority and to its rules. By way of example of the use of URL addresses under Section 2 of the Act, the OAL provides the following information on its website, at <http://nj.gov/oal/about/about/>:

"The statutes under which the OAL is granted its authority are N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. These statutes may be accessed at <http://njlaw.rutgers.edu/cgi-bin/njstats/showsections.cgi?title=52&chapt=14B> and <http://njlaw.rutgers.edu/cgi-bin/njstats/showsections.cgi?title=52&chapt=14F>, respectively. This website's statutory database is updated daily by the Law Library of the Rutgers School of Law - Newark. The OAL checks the functionality and currency of this website on a bi-weekly basis.

The rules of the OAL are set forth in Title 1 of the New Jersey Administrative Code, and may be accessed at <http://www.lexisnexis.com/hottopics/njcode/>. This website's rules database is updated by LexisNexis concurrently with the publication of the printed updates to the New Jersey Administrative Code, which updates are published two weeks after publication of the New Jersey Register issue containing the rule changes included in the update. The OAL checks the functionality and currency of this website upon publication of a New Jersey Administrative Code update.

The OAL may be contacted concerning the nonfunctioning of either of the websites in the two preceding paragraphs at Office of Administrative Law, P.O. Box 049, Trenton, NJ 08625-0049; [NJRfilings@oal.state.nj.us](mailto:NJRfilings@oal.state.nj.us); or (609) 689-4015."

Proposed N.J.A.C. 1:30-2.10(d) incorporates the Act's amendments to N.J.S.A. 52:14B-3, requiring each agency to make the following available for public viewing, through publication on the agency's Internet website: all final agency orders, decisions, and opinions; 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 a complete list of the agency's permits, fees, violations, penalties, deadlines, processing times, and appeals procedures. In addition to Internet website publication, agencies are also required to make all final agency orders, decisions, and opinions available through other means.

N.J.A.C. 1:30-3.4(a) requires each agency to post either its rulemaking calendar or a notice of availability of its rulemaking calendar for the fee established under N.J.A.C. 1:30-3.4(c). In keeping with the Act's requirement at N.J.S.A. 52:14B-3(4) that all rulemaking notices be published on an agency's Internet website, N.J.A.C. 1:30-3.4(a) is proposed for amendment to provide that each agency must include on its Internet website both its rulemaking calendars and a notice of availability.

The Act amends the petition for rulemaking requirements at N.J.S.A. 52:14B-4(f) to eliminate the requirement for agencies to prescribe by rule the procedure for submission of a petition, providing instead that a petition may be submitted to an agency through mail, e-mail, electronic mailing list, or any other means. The proposed amendments to N.J.A.C. 1:30-4.1(a) and (b) incorporate these statutory changes. The amendment to N.J.A.C. 1:30-4.1(a) that includes these ways in which a petition may be submitted prefaces "electronic mailing list" with "if designed to receive messages," because the Act's definition of "electronic mailing list" describes it as a means for an agency to distribute e-mail messages to a user-generated subscriber list, but makes no reference to the list being a means for submission of messages to the agency. Proposed new N.J.A.C. 1:30-4.1(d) reflects the new requirement at N.J.S.A. 52:14B-3(4) for agencies to publish on their websites each petition for rulemaking received. In order to establish a reasonable time frame for them to do so, the new subsection requires such publication to occur no later than the date of publication of the notice of receipt of the petition in the New Jersey Register under N.J.A.C. 1:30-4.1(c). For example, if an agency receives a petition for rulemaking on December 1, 2014, it must submit a notice of receipt of the petition to the OAL for New Jersey Register publication within 15 days, in this case, by December 16, 2014. See N.J.A.C. 1:30-4.1(c). Based on the 2014 New Jersey Register Publication Schedule, submission of the notice between December 1 and 10 would

result in publication of the notice in the January 5, 2015, Register issue, and posting of the petition on the agency's website by January 5, 2015; submission of the notice between December 11 and 16 would result in publication of the notice in the January 20, 2015, Register issue, and posting of the petition on the agency's website by January 20, 2015.

N.J.A.C. 1:30-4.2(e) is proposed to reflect the Act's requirement in the third paragraph of N.J.S.A. 52:14B-4(f) for publication of an agency's notice of action on a petition for rulemaking on the agency's Internet website. The new subsection requires such publication to occur no later than the date of publication of the notice of action in the New Jersey Register under N.J.A.C. 1:30-4.2(d). The Register publication deadline for Internet publication was added by the OAL for notices of action on a petition for rulemaking and other rulemaking notices discussed below to provide a realistic time frame for agency action that would, at its latest, coincide with the notice's official publication in the New Jersey Register.

The fourth paragraph of N.J.S.A. 52:14B-4(f) has long provided that, where an agency fails to act on a petition for rulemaking within the time frames in the subsection's third paragraph, a rulemaking petitioner may ask the OAL Director to order a public hearing on the petition and to notify the agency of the Director's intent to hold the public hearing if the agency does not. If the agency does not provide notice of a hearing within 15 days of the Director's notice, the Director shall schedule the hearing, and provide the public with notice of the hearing at least 15 days prior thereto. The Act adds a requirement that the hearing notice also be published on the agency's Internet website. The proposed amendment to N.J.A.C. 1:30-4.3(c) provides that, whether the hearing is conducted by the agency or the OAL, the agency shall publish notice of the hearing on its Internet website, at least 15 days prior to the hearing.

The Act requires agencies to increase their electronic communications, but treats e-mail and list-serve type communications differently. The Act requires agencies to accept rule comments through e-mail, but it does not require them to accept them through list-serve type communications. More specifically, in the definitions section, the Act defines an electronic mailing list as a means to distribute e-mail messages to a user-generated subscriber list. Because the definition makes no reference to receiving response messages from such a list, agencies are only required to distribute information through that means. Upon receipt of a notice of proposal through an electronic mailing list, a subscriber can comment on the proposal by e-mail or regular mail to the appropriate address specified in the notice. Agencies have the option to also receive commentary through list-servs, but the choice is left to their discretion. If, however, agencies do elect to accept rule comments through electronic mailing lists, they are then required to consider them as fully as the Act requires consideration of any written submission, including those through e-mail. Accordingly, proposed new N.J.A.C. 1:30-5.1(b)9iv provides that the information in a notice of proposal regarding the public's opportunity to be heard on the notice shall include an address to which comments may be submitted through the agency's e-mail system or, if designed to receive messages, electronic mailing list.

The Act amends the provisions of N.J.S.A. 52:14B-4(a)(1) concerning the notice regarding a proposed rulemaking that the proposing agency is required to provide. The statute is updated, replacing the language "electronically through the largest nonproprietary cooperative public computer network" with language simply requiring notice to be available for public viewing through publication of the agency's Internet website. Publication of a notice of proposal on the agency's Internet website is also required under amended N.J.S.A. 52:14B-4(a)(2), as well as through the new requirement in N.J.S.A. 52:14B-3(4) for an agency to publish its rulemaking notices on its Internet website. The proposed amendment to N.J.A.C. 1:30-5.2(a)5 conforms the paragraph to these requirements, requiring that an agency publish the notice of proposal on its Internet website. The proposed amendment further requires the Internet website publication of the notice of proposal to occur no later than the date of publication of the notice in the New Jersey Register.

Prior to the Act's amendments, N.J.S.A. 52:14B-4(a)(1) included the following language: "Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so, and inform those persons most likely to be affected by or interested in the intended action." From this requirement, a number of agencies, including the OAL, developed lists of interested persons and

entities to which notice of proposed rulemaking would be distributed. Current N.J.A.C. 1:30-5.2(a)6i(5) includes mailing notice to a distribution list as an acceptable method of additional notice of a proposed rulemaking, and N.J.A.C. 1:30-5.2(a)6i(6) provides for additional notice in "[a]ny other manner reasonably calculated to inform those persons most likely to be affected by or interested in the intended action."

The Act changed the above-quoted language in N.J.S.A. 52:14B-4(a)(1) to: "Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so. In order to inform those persons most likely to be affected by or interested in the intended action, each agency shall distribute notice of its intended action to interested persons, and shall publicize the same, through the use of an electronic mailing list or similar type of subscription-based e-mail service." This change encompasses the concept of notice to a distribution list compiled by an agency, and adds notice to an electronic mailing list created by members of the public. The two new required methods of publicity are included at new N.J.A.C. 1:30-5.2(a)3i and iii. As the two new methods together appear to be an enhancement of the "[m]ailing to a distribution list" method of additional publicity an agency may use under N.J.A.C. 1:30-5.2(a)6ii(5), that sub-subparagraph is proposed for deletion. In addition, as the statutory phrase "to inform those persons most likely to be affected by or interested in the intended action" was changed from a statement of purpose for the additional proposal publicity required of an agency, the manner of which it was required to rulemake, to a statement of purpose for two added types of required publicity, the language is proposed to be deleted at N.J.A.C. 1:30-5.2(a)6 and (a)6ii(6).

N.J.S.A. 52:14B-4(a)(1) sets forth several additional publicity methods an agency may employ for a proposed rulemaking, which methods are included at N.J.A.C. 1:30-5.2(a)6ii(1) through (4). The Act amends the method "posting of notices in appropriate locations" by adding, "including the agency's Internet website." As previously discussed, the Act requires an agency to publish a notice of proposal on its Internet website, the fulfillment of which requirement by an agency would also satisfy the additional publicity requirement as amended. In providing for the mandatory Internet publication of a notice of proposal to also satisfy the requirement for additional publicity, this amendment seems contrary to the apparent purpose of many of the Act's other amendments to increase public awareness of and access to State agency rulemakings. In order to give workable effect to this allowance of Internet posting in the context of the broad public notice requirements of N.J.S.A. 52:14B-4(a)(1), the OAL proposes new N.J.A.C. 1:30-5.2(a)6ii(4)(A), which provides if an agency's rule on its method of additional publicity promulgated pursuant to N.J.A.C. 1:30-5.2(a)6 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 N.J.A.C. 1:30-5.2(a)3 shall satisfy the additional publicity requirements of N.J.A.C. 1:30-5.2(a)6 for that notice of proposal.

The Act's amendments to N.J.S.A. 52:14B-4(e) concerning notices of pre-proposal are incorporated into N.J.A.C. 1:30-5.3. Proposed N.J.A.C. 1:30-5.3(d) provides that 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. The design language concerning the electronic mailing list, while not appearing in the Act, is included for the reason discussed above concerning proposed new N.J.A.C. 1:30-5.1(b)9iv. Proposed new N.J.A.C. 1:30-5.3(e) provides that 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.

N.J.A.C. 1:30-5.4(d) requires agencies to accept all public comments postmarked within the designated comment period in a notice of proposal or pre-proposal, or as thereafter extended. To accommodate comments submitted by e-mail or through an electronic mailing list, the subsection is proposed for amendment to require the acceptance of e-mail comments bearing an e-mail sent date, and comments submitted through an

electronic mailing list bearing a list posting date, within the designated comment period, or as thereafter extended.

The second paragraph of N.J.S.A. 52:14B-4(a)(3) requires an agency to 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, and the agency shall provide at least 15 days' notice of the hearing. The Act amends that paragraph to require the agency to publish the hearing notice on its Internet website. N.J.A.C. 1:30-5.5(b)2 sets forth requirements for notice of public hearings that are scheduled after a notice of proposal or pre-proposal has been published, which would include those hearings required to be held upon request under N.J.S.A. 52:14B-4(a)(3). The paragraph is proposed for amendment to require an agency to publish notice of a public hearing under the paragraph on the agency's Internet website at least 15 days prior to the hearing date. The website publication time frame was added to coincide with the minimum notice required for hearings held upon request, as well as for other hearings governed subject to the paragraph. While the proposed amendment also applies to hearings scheduled by an agency after publication of a notice of proposal or pre-proposal that are not required to be held upon request, such hearings are uncommon, and the Internet publication requirement would not be unduly burdensome for agencies and is in keeping with the Act's amendments promoting agency Internet websites as a source of rulemaking information.

N.J.A.C. 1:30-5.6 sets forth the requirements for the rulemaking record to be maintained by State agencies. N.J.A.C. 1:30-5.6(a)1i requires the record to include any notice mailed to interested persons pursuant to N.J.A.C. 1:30-5.2(a)3. As N.J.A.C. 1:30-5.2(a)3 as proposed for amendment includes interested persons as a group to whom notice is to be sent and requires the e-mailing of notice to electronic mailing list subscribers, N.J.A.C. 1:30-5.6(a)1i is proposed for amendment to delete the reference to "interested persons" and to refer to any notice mailed or "e-mailed." The requirements for proposal notice at current N.J.A.C. 1:30-5.2(a)3, 4, and 5 provide the proposing agency, respectively, the option of providing notice by mailing, distributing, or making available electronically a statement of the substance of the proposed action instead of the notice of proposal. N.J.A.C. 1:30-5.6(a)1i, ii, and iii require the rulemaking record to include, respectively, copies of any notice so mailed, distributed, or made available electronically, and were intended to make clear that the record was to include copies of statements of the substance of the proposed action, if used by an agency. While N.J.A.C. 1:30-5.2(a)5 currently requires website availability of a notice of proposal or a statement of the substance of the proposed action, the paragraph is proposed for amendment to correspond to the Act's requirement for an agency to publish the notice of proposal on its Internet website. As including in the rulemaking record a copy of the notice of proposal is encompassed by the general "notices concerning the rule activity" in N.J.A.C. 1:30-5.6(a)1, and amended N.J.A.C. 1:30-5.2(a)5 no longer provides for website availability of a statement of the substance of the proposed action, the requirement in N.J.A.C. 1:30-5.6(a)1iii that would require retention of a copy of such statement is no longer necessary, and the subparagraph is proposed for deletion.

Proposed N.J.A.C. 1:30-6.1(d) reflects the Act's amendments at N.J.S.A. 52:14B-3(4) and 4(a)(4), which require an agency to publish its notices of adoption on its Internet website. The requirement at N.J.S.A. 52:14B-3(4) for an agency to publish its rulemaking notices on its Internet website is also reflected in the proposed amendment to N.J.A.C. 1:30-6.4(h) concerning notices of readoption. Both proposed amendments further provide for such website publication to occur no later than the date of publication of the notice in the New Jersey Register.

The requirement at N.J.S.A. 52:14B-3(4) for an agency to publish its rulemaking notices on its Internet website is also reflected in the proposed amendment to N.J.A.C. 1:30-6.3(d), which, together with N.J.A.C. 1:30-6.3(c), sets forth the requirements for a notice of proposed substantial changes on adoption of proposed amendments pursuant to N.J.S.A. 52:14B-4.10. Subsection (d) requires an agency to provide additional notice of such notice in accordance with the requirements for notices of proposal at N.J.A.C. 1:30-5.2(a)3 through 6. The proposed

amendment provides that publication of the notice of proposed substantial changes on adoption of proposed amendments on the agency's Internet website shall occur no later than the publication date of the notice in the New Jersey Register.

The Act's amendments to N.J.S.A. 52:14B-4(c) concerning emergency rule adoptions require an agency to publish on its Internet website, a summary of any rule adopted pursuant to that subsection, and the statement of reasons for the agency's finding that an imminent peril exists. This requirement is reflected in proposed N.J.A.C. 1:30-6.5(g). The proposed new subsection further requires this website publication to occur on the date the emergency rule is filed with the OAL, which date is the effective date of the emergency rule; this requirement is intended to increase public awareness of such filing-effective regulatory changes. The new subsection also requires an agency to 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.

In addition to the amendments pursuant to the Act discussed above, the OAL proposes the following amendments to update, clarify, or correct its rules on rulemaking:

At N.J.A.C. 1:30-1.2, an amendment is proposed to the definition of "file" to change the statement that a document is "stamped with the date and time of receipt," which applied when Register notices were submitted to the OAL in paper form, to "notated with the date of receipt," which is the document receipt practice under the current electronic document submission process. In the definition of "operative," the second sentence provides that, unless otherwise specified in the rule, a rule becomes operative when effective. The sentence is proposed for amendment to change "specified in the rule" to "specified in the rule or notice of adoption of the rule" to conform to the long-standing allowance of an operative date to also appear in the heading of a notice of adoption, if such date is later than the date of Register publication (which is, with some exceptions, the effective date of the adoption). See N.J.A.C. 1:30-6.1(b)10.

N.J.A.C. 1:30-1.9, Copies of documents; fees, is proposed for amendment to subsection (a) to replace per page fees for copies of filed documents from the OAL's Division of Administrative Rules that are out-of-date under N.J.S.A. 47:1A-5.b with a reference to that statutory provision as the basis for obtaining such copies from the Division. N.J.S.A. 47:1A-5.b currently provides paper copying charges of \$.05 per letter size page or smaller and \$.07 per legal size page or larger; special provisions for situations in which actual costs of providing copies exceed those rates; and free access to electronic records and non-printed materials. In keeping with this amendment, N.J.A.C. 1:30-3.4(c) is proposed for amendment to delete reference to the copying fee schedule at N.J.A.C. 1:30-1.9(a).

N.J.A.C. 1:30-5.1(b)9iii requires an agency to include in the information on the public's opportunity to be heard in a notice of proposal, the name, address, and telephone number of the person(s) to receive written comments or oral comments. As a telephone number would only be necessary in a situation in which an agency has opted to permit the submission of oral comments by telephone, the subparagraph is proposed for amendment to so reflect. In addition, the subparagraph is proposed for amendment to provide that the name and address to be included is that of the person to receive postally-mailed written comments. As discussed above, proposed N.J.A.C. 1:30-5.1(b)9iv requires an agency to include in a notice of proposal an address for the submission of comments through the agency's e-mail system or, if designed to receive messages, electronic mailing list.

The proposed amendment to N.J.A.C. 1:30-5.1(d) deletes the requirement for a notice of proposal to include the full text of a proposed repeal or readoption. In the great majority of cases, a notice of proposal refers the reader to the New Jersey Administrative Code for the full text of the rule proposed for repeal or the chapter proposed for readoption. In addition, the subsection is proposed for amendment to require the notice of proposal to include the full text of the proposed new rule or amendment, specifically indicating any additions and/or deletions. This amendment deleting "of any rule text being repealed or recodified" after "any additions and/or deletions" conforms the rule text to the long-standing format of a notice of proposal.

N.J.A.C. 1:30-5.2 sets forth the requirements for publication and distribution of a notice of proposal. N.J.A.C. 1:30-5.2(a) introduces the actions set forth in paragraphs (a)1 through 6 that the OAL and the agency submitting the notice of proposal are to take in regards to the notice by way of the publication of the notice and distribution of the notice or a statement of the substance of the proposed action, and begins with the phrase “[u]pon OAL’s receipt of a notice of proposal.” As the actions under paragraphs (a)2 through 6 occur after, rather than upon, the OAL’s receipt of the notice, the phrase is proposed for amendment as “[a]fter the OAL’s receipt of a notice of proposal.” In keeping with this clarifying amendment, N.J.A.C. 1:30-5.2(a)1 is proposed for amendment to provide that the OAL shall submit the notice of proposal to the Senate and General Assembly within two business days “of receipt” of the notice. In addition, the paragraph’s exception to this requirement for a notice of a Federally required rule, referencing N.J.A.C. 1:30-3.7, is proposed for deletion. N.J.S.A. 52:14B-4.4, which defined a Federally required rule and exempted a notice of proposal of such a rule from submission to the Legislature by the OAL, was repealed in 2001, and N.J.A.C. 1:30-3.7, recodified as N.J.A.C. 1:30-5.8, which incorporated that definition and exemption, was subsequently repealed.

At N.J.A.C. 1:30-6.1(a), the OAL proposes to delete a superfluous “(a)” introduced into the rule text during the publication of a 2001 rulemaking.

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

**Social Impact**

The OAL anticipates a positive social impact from the proposed amendments and new rule. The new additional notice requirements for notices of proposal and pre-proposal may increase public awareness of State agency rulemakings. Along with the submission of public comments on proposals and pre-proposals by e-mail and through electronic mailing lists, these requirements could result in broader public input in the rulemaking process, with the potential for improvement of agency rules. The extensive requirements for Internet website publication of, or linking to, State agency laws and rules, and Internet website publication of State agency rulemaking notices; final orders, decisions, and opinions; and public hearing notices, publicity documents, press releases, permits, fees, violations, penalties, etc., would facilitate access by the public and all levels of government to, and possibly enhance understanding of, the bases for and processes of State agency action. The petition for rulemaking process is made easier for petitioners by the expansion of the methods for submission of a petition.

**Economic Impact**

As reflective of the Act’s requirements, the proposed amendments and new rule will have their most significant economic impact on State agencies. State agencies will have to adjust their internal rulemaking processes to accommodate the additional requirements for proposal notice, the rulemaking notice Internet website publication requirements, and the new rulemaking petition and proposal comment submission methods. In addition, State agencies may have to alter the structure and features of their Internet websites to accommodate the electronic mailing list subscription sign-up; the publication of, or linking to, the agency’s laws and rules; and the publication of the agency’s rulemaking notices; final orders, decisions, and opinions; and public hearing notices, publicity documents, press releases, permits, fees, violations, penalties, etc. These alterations to State agency Internet websites will require the allocation of staff resources, particularly in the information technology area, and may also require the assistance of the Office of Information Technology in the Department of the Treasury. State agencies will also have to adjust responsibilities of certain staff in order to ensure the continual updating of the documents and information required to be published on their Internet websites.

The required publication of information and documents on the agencies’ Internet websites should economically benefit the public in terms of the time and cost savings in not having to travel to obtain the information and view, or obtain copies of, the documents, or to go through a remote ordering process to obtain copies of the documents. Copying charges for paper copies of these documents that were not previously in electronic form need not be incurred once the documents

are published on an agency’s Internet website. Members of the public seeking to comment on notices of proposal could do so electronically and not have to pay postage. The proposed amendment to N.J.A.C. 1:30-1.9 replacing outdated per page charges for copies of filed documents from the OAL’s Division of Administrative Rules with a reference to the statute setting forth the current applicable charges will not have an economic impact, as the lower statutory charges already apply.

**Federal Standards Statement**

A Federal standards analysis is not required because proposed 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.

**Jobs Impact**

The proposed amendments and new rule will not generate or cause the loss of any jobs.

**Agriculture Industry Impact**

The proposed amendments and new rule will not have any impact specific to the agriculture industry. Businesses within that industry may benefit as members of the public as discussed under the Social Impact and Economic Impact above.

**Regulatory Flexibility Statement**

The proposed amendments and new rule do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements in the amendments and new rule are imposed on State agencies.

**Housing Affordability Impact Analysis**

The proposed amendments and new rule will have no impact on housing affordability, as the amendments and new rule concern the State agency rulemaking process and requirements for State agencies to publish their laws, rules, and specified other documents and information on their Internet websites.

**Smart Growth Development Impact Analysis**

The proposed amendments and new rule will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as the amendments and new rule concern the State agency rulemaking process and requirements for State agencies to publish their laws, rules, and specified other documents and information on their Internet websites.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [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; [stamped] **notated** with the date [and time] 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-[2]5.b. [upon payment of a fee as follows:

1. First page to 10th page: \$ .75 per page;
2. Eleventh page to 20th page: \$ .50 per page;
3. All pages over 20: \$ .25 per page.]

(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 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 [web site] website concerned with rulemaking, [either] its rulemaking calendar [or] and a notice of the availability of its rulemaking calendar for the fee established at (c) below. If an agency’s [web site] 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 [web site] 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 [the copying fee schedule at] 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 [submission,] 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, [that] **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 [and telephone number] of the person(s) to receive **postally-mailed** written [or] **comments and, if an agency intends to receive oral comments telephonically, the telephone number of the person(s) to receive such comments;** [and]

**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**

[iv.] v. If the agency chooses to accept comments by electronic[ally] **facsimile**, a facsimile telephone number (FAX number) [and/or e-mail address].

(c) (No change.)

(d) The notice of proposal shall include the full text of the proposed new rule[,] or amendment, [repeal or readoption,] specifically indicating additions and/or deletions [of any rule being repealed or recodified].

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

(a) [Upon] **After the** OAL’s receipt of a notice of proposal [which] **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**, [the notice, other than a notice of a Federally required rule (see N.J.A.C. 1:30-3.7),] 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 [those]:

**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 [make available electronically] **publish the notice of proposal** on its [web site , through the largest nonproprietary cooperative public computer network, either the notice of proposal, as filed, or a statement of the substance of the proposed action] **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[, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule]. 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.**

[(5) Mailing to a distribution list; or

(6) Any other manner reasonably calculated to inform those persons most likely to be affected by or interested in the intended action.]

(b) Additional notice of the proposal under (a)3, [through] **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.**

[(d)] **(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 [to interested persons] **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. Any notice made available electronically pursuant to N.J.A.C. 1:30-5.2(a)5; and]

[iv.] **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 [(a)] 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.**

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF CODES AND STANDARDS

#### Continuing Care Retirement Communities Rights of Residents

**Proposed Amendments: N.J.A.C. 5:19-1.1, 1.3, 4.1,  
 4.2, 6.2, 6.3, 6.4, and 6.5**

**Proposed Recodification with Amendments: N.J.A.C.  
 5:19-9 as 5:19-13**

**Proposed New Rules: N.J.A.C. 5:19-9.1, 9.2, 10, 11,  
 and 12**

**Proposed Repeal: N.J.A.C. 5:19-2.12**

Authorized By: Richard E. Constable, III, Commissioner,  
 Department of Community Affairs.

Authority: N.J.S.A. 52:27D-358.

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

Proposal Number: PRN 2014-193.

Submit written comments by January 16, 2015, to:

Gabrielle N. Gallagher  
 Department of Community Affairs  
 PO Box 800  
 Trenton, New Jersey 08625  
 Fax No. (609) 984-6696  
[gabrielle.gallagher@dca.state.nj.us](mailto:gabrielle.gallagher@dca.state.nj.us)

The agency proposal follows:

#### Summary

The below amendments, repeal, and new rules are proposed in order to implement the "Bill of Rights for Continuing Care Retirement

Community Residents in Independent Living Act," P.L. 2013, c. 167. This Act establishes rights of the residents and requires that each continuing care retirement facility post and distribute a statement of residents' rights. The Act also requires that the facility supply residents with financial information, including fees for services not covered and the facility's annual disclosure statement. Additionally, the Act provides for the cancellation of the continuing care agreement by the resident or by the facility. The proposed amendments, repeal, and new rules incorporate the rights of residents established by the Act into the Continuing Care Retirement Community rules.

1. N.J.A.C. 5:19-1.1: The proposed amendments add a reference to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act and also add a statement to make it clear that these rules do not supersede those promulgated by other agencies.

2. N.J.A.C. 5:19-1.3: The proposed amendments add a reference to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act to the definition of "Act," add a definition for "Bill of Rights for Continuing Care Retirement Community Residents in Independent Living," add a reference to the rule for the determination of a reasonable application fee to the definition of "application fee," and replace "household unit" with "one or more persons" in the definition of "living unit."

3. N.J.A.C. 5:19-2.12 is proposed for repeal. The provisions contained in this section have been included in the proposed amendments to N.J.A.C. 5:19-13.2 and are generally applicable to violations of the Act or regulations.

4. N.J.A.C. 5:19-4.1 and 4.2: The proposed amendments add references to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act (hereinafter referred to as "the Act") and its requirements.

At N.J.A.C. 5:19-4.1(b), the proposed amendments also change "plain English" to "clear and plain" language and establish a requirement that the disclosure statement reflect the terms of the Act, including an explanation of the rights and responsibilities of residents.

At N.J.A.C. 5:19-4.2(a)12, 13, and 14, the provisions regarding the contents of the disclosure statement are proposed to be amended to add a reference to the Bill of Rights, to require that the notice include the right to review and to cancel the agreement within 30 days after signing and the right to a refund, and to state that, as part of the disclosure, the facility's rules and regulations are to be provided to the resident and that these rules must be consistent with the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living.

The proposed amendments also add language to N.J.A.C. 5:19-4.1(c) to state explicitly that the obligation of full and fair disclosure is ongoing and applies to all of those involved in the ownership or management of the facility and that the disclosure statement must be clear (amendments to subsections (b) and (c)).

Finally, a new N.J.A.C. 5:19-4.2(a)15 is proposed to cover other information that may be included.

5. N.J.A.C. 5:19-6: The proposed amendments to N.J.A.C. 5:19-6.2, Notice of rescission, provide that language be added stating that expenses incurred by the provider at the resident's request must be itemized and supported by appropriate documentation. Additionally, the right to cancellation and to a full or partial refund of the entrance fee is added to the notice. Additionally, there is a proposed amendment to N.J.A.C. 5:19-6.2 to require that the notice be in 12-point boldface type or larger, instead of the current 10-point boldface type or larger.

N.J.A.C. 5:19-6.3(a) provides, in part, that occupancy of the living unit by the resident prior to the expiration of the 30-day rescission period shall not be construed as a waiver of any part of said rescission period. The subsection is amended to provide that, if desired, the resident may wait until the end of the 30-day rescission period to take occupancy, without waiver or penalty. A new N.J.A.C. 5:19-6.3(c) is added requiring that the amount of the entrance fee, the method by which the provider has calculated the amounts refundable, and the amounts thereof that are refundable (including any conditions that may affect the amount of any refund) shall be set forth in a clear and conspicuous manner, in plain and easily understood language in the contract.

The requirements for the content of the continuing care agreement, at N.J.A.C. 5:19-6.4(a), replace "plain English" with "clear and plain"