

CHAPTER 5

AN ACT concerning rule-making and the Office of Administrative Law, amending P.L.1968, c.410, P.L.1978, c.67 and P.L.1981, c.27, supplementing P.L.1968, c.410 (C.52:14B-1 et seq.) and repealing parts of P.L.1981, c.27.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1968, c.410 (C.52:14B-3) is amended to read as follows:

C.52:14B-3 Additional requirements for rule-making.

3. In addition to other rule-making requirements imposed by law, each agency shall:

- (1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

- (2) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency, and if not otherwise set forth in an agency's rules, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures;

- (3) make available for public inspection all final orders, decisions, and opinions, in accordance with the provisions of chapter 73 of the laws of 1963 as amended and supplemented (C.47:1A-1 et seq.);

- (4) publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rule-making activities for the next six months. The calendar shall include the name of the agency and agency head, a citation to the legal authority authorizing the rule-making action and a synopsis of the subject matter and the objective or purpose of the agency's proposed rules.

In a manner prescribed by the Director of the Office of Administrative Law, each agency shall appropriately publicize that copies of its calendar are available to interested persons for a reasonable fee. The amount of the fee shall be set by the director.

An agency shall notify the Director of the Office of Administrative Law when it wishes to amend its calendar of rule-making activities. Any amendment which involves the addition of any rule-making activity to an agency's calendar shall provide that the agency shall take no action on that matter until at least 45 days following the first publication of the amended calendar in which the announcement of that proposed rule-making activity first appears.

The provisions of this paragraph shall not apply to rule-making:

- (a) required or authorized by federal law when failure to adopt rules in a timely manner will prejudice the State ;

- (b) subject to a specific statutory authorization requiring promulgation in a lesser time period;

- (c) involving an imminent peril subject to provisions of subsection (c) of section 4 of P.L.1968, c.410 (C.52:14B-4);

- (d) for which the agency has published a notice of pre-proposal of a rule in accordance with rules adopted by the Director of the Office of Administrative Law; or

- (e) for which a comment period of at least 60 days is provided.

A proposed rule falling within any of the exceptions to the provisions of this subsection shall so indicate in the notice of proposal .

2. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read as follows:

C.52:14B-4 Adoption, amendment, repeal of rules.

4. (a) Prior to the adoption, amendment, or repeal of any rule, except as may be otherwise provided, the agency shall:

- (1) Give at least 30 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and in addition to other public notice required by law shall be published in the New Jersey Register. Notice shall also

be distributed to the news media maintaining a press office to cover the State House Complex, and made available electronically through the largest nonproprietary cooperative public computer network. 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. Methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations. The rules shall prescribe the circumstances under which each additional method shall be employed;

(2) Prepare for public distribution at the time the notice appears in the Register a statement setting forth a summary of the proposed rule, a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, a description of the expected socio-economic impact of the rule, a regulatory flexibility analysis, or the statement of finding that a regulatory flexibility analysis is not required, as provided in section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect, and an agriculture industry impact statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3); and

(3) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. If within 30 days of the publication of the proposed rule sufficient public interest is demonstrated in an extension of the time for submissions, the agency shall provide an additional 30 day period for the receipt of submissions by interested parties. The agency shall not adopt the proposed rule until after the end of that 30 day extension.

The agency shall conduct a public hearing on the proposed rule at the request of a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest is shown, provided such request is made to the agency within 30 days following publication of the proposed rule in the Register. The agency shall provide at least 15 days' notice of such hearing, which shall be conducted in accordance with the provisions of subsection (g) of this section.

The head of each agency shall adopt as part of its rules of practice adopted pursuant to section 3 of P.L.1968, c.410 (C.52:14B-3) definite standards of what constitutes sufficient public interest for conducting a public hearing and for granting an extension pursuant to this paragraph.

(4) Prepare for public distribution a report listing all parties offering written or oral submissions concerning the rule, summarizing the content of the submissions and providing the agency's response to the data, views and arguments contained in the submissions.

(b) A rule prescribing the organization of an agency may be adopted at any time without prior notice or hearing. Such rules shall be effective upon filing in accordance with section 5 of this act or upon any later date specified by the agency.

(c) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, and the Governor concurs in writing that an imminent peril exists, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt the rule. The rule shall be effective for a period of not more than 60 days unless each house of the Legislature passes a resolution concurring in its extension for a period of not more than 60 additional days. The rule shall not be effective for more than 120 days unless repromulgated in accordance with normal rule-making procedures.

(d) No rule hereafter adopted is valid unless adopted in substantial compliance with this act. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this act shall be commenced within one year from the effective date of the rule.

(e) An agency may file a notice of intent with respect to a proposed rule-making proceeding with the Office of Administrative Law, for publication in the New Jersey Register at any time prior to the formal notice of action required in subsection (a) of this section. The notice shall be for the purpose of eliciting the views of interested parties on an action prior to the filing of a formal rule proposal. An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated

rule-making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule-making.

(f) An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Each agency shall prescribe by rule the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:

- (1) The substance or nature of the rule-making which is requested;
- (2) The reasons for the request and the petitioner's interest in the request;
- (3) 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.

Within 60 days following receipt of any such petition, the agency shall either; (i) deny the petition, giving a written statement of its reasons; (ii) grant the petition and initiate a rule-making proceeding within 90 days of granting the petition ; or (iii) refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations . Upon conclusion of such further deliberations, the agency shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register.

If an agency fails to act in accordance with the time frame set forth in the preceding paragraph, upon written request by the petitioner, the Director of the Office of Administrative Law shall order a public hearing on the rule-making petition and shall provide the agency with a notice 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 and provide the public with a notice of that hearing at least 15 days prior thereto. If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-5), or an independent contractor assigned by the director. The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition, a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in subsection (g) of section 4 of P.L.1968, c.410 (C.52:14B-4), except that the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition. This report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rule-making.

(g) All public hearings shall be conducted by a hearing officer, who may be an official of the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent contractor. The hearing officer shall have the responsibility to make recommendations to the agency regarding the adoption, amendment or repeal of a rule. These recommendations shall be made public. At the beginning of each hearing, or series of hearings, the agency, if it has made a proposal, shall present a summary of the factual information on which its proposal is based, and shall respond to questions posed by any interested party. Hearings shall be conducted at such times and in locations which shall afford interested parties the opportunity to attend. A verbatim record of each hearing shall be maintained, and copies of the record shall be available to the public at no more than the actual cost , which shall be that of the agency where the petition for rule-making originated.

3. Section 5 of P.L.1968, c.410 (C.52:14B-5) is amended to read as follows:

C.52:14B-5 Filing of rules; concurrent resolution of the Legislature; effect of publication.

5. (a) Each agency shall file with the Director and Chief Administrative Law Judge of the Office of Administrative Law a certified copy of each rule adopted by it.

(b) Deleted by amendment, P.L.2001, c.5.

(c) The director shall: (1) accept for filing or publication any rule duly adopted and submitted by any agency pursuant to this act and which meets all of the requirements and standards of P.L.2001, c.5 (C.52:14B-4.1a et al.); (2) endorse upon the certified copy of each rule accepted for filing pursuant to this act the date and time upon which such rule was filed; (3) maintain the certified copy of each rule so filed in a permanent register open to public inspection; and (4) accept for publication a duly adopted concurrent resolution of the Legislature invalidating any rule or regulation, in whole or in part, or prohibiting the proposed rule or regulation, in whole or in part, from taking effect.

(d) The filing of a certified copy of any rule shall be deemed to establish the rebuttable presumptions that: (1) it was duly adopted; (2) it was duly submitted for prepublication and made available for public inspection at the hour and date endorsed upon it; (3) all requirements of this act and of interagency rules of the director relative to such rule have been complied with; (4) its text is the text of the rule as adopted. Judicial notice shall be taken of the text of each rule, duly filed.

(e) The publication of a rule in the New Jersey Administrative Code or the New Jersey Register shall be deemed to establish the rebuttable presumption that the rule was duly filed and that the text of the rule as so published is the text of the rule adopted. Judicial notice shall be taken of the text of each rule published in the New Jersey Administrative Code or the New Jersey Register.

4. Section 10 of P.L.1968, c.410 (C.52:14B-10) is amended to read as follows:

C.52:14B-10 Evidence; judicial notice; recommended report and decision; final decision; effective date.

10. In contested cases:

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either (i) necessitate undue consumption of time or (ii) create substantial danger of undue prejudice or confusion. The administrative law judge shall give effect to the rules of privilege recognized by law. Any party in a contested case may present his case or defense by oral and documentary evidence, submit rebuttal evidence and conduct such cross-examination as may be required, in the discretion of the administrative law judge, for a full and true disclosure of the facts.

(b) Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or administrative law judge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the agency or administrative law judge may be utilized in the evaluation of the evidence, provided this is disclosed of record.

(c) All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director and Chief Administrative Law Judge of the Office of Administrative Law, except as provided by this amendatory and supplementary act. A recommended report and decision which contains recommended findings of fact and conclusions of law and which shall be based upon sufficient, competent, and credible evidence shall be filed, not later than 45 days after the hearing is concluded, with the agency in such form that it may be adopted as the decision in the case and delivered or mailed, to the parties of record with an indication of the date of receipt by the agency head; and an opportunity shall be afforded each party of record to file exceptions, objections, and replies thereto, and to present argument to the head of the agency or a majority

thereof, either orally or in writing, as the agency may direct. The head of the agency, upon a review of the record submitted by the administrative law judge, shall adopt, reject or modify the recommended report and decision no later than 45 days after receipt of such recommendations. In reviewing the decision of an administrative law judge, the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record. Unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency. The recommended report and decision shall be a part of the record in the case. For good cause shown, upon certification by the director and the agency head, the time limits established herein may be subject to extension.

(d) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated and shall be based only upon the evidence of record at the hearing, as such evidence may be established by rules of evidence and procedure promulgated by the director.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The final decision may incorporate by reference any or all of the recommendations of the administrative law judge. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.

(e) Except where otherwise provided by law, the administrative adjudication of the agency shall be effective on the date of delivery or on the date of mailing, of the final decision to the parties of record whichever shall occur first, or shall be effective on any date after the date of delivery or mailing, as the agency may provide by general rule or by order in the case. The date of delivery or mailing shall be stamped on the face of the decision.

5. Section 9 of P.L.1978, c.67 (C.52:14F-7) is amended to read as follows:

C.52:14F-7 Construction of act.

9. a. Nothing in this amendatory and supplementary act shall be construed to deprive the head of any agency of the authority pursuant to section 10 of P.L.1968, c.410 (C.52:14B-10) to determine whether a case is contested or to adopt, reject or modify the findings of fact and conclusions of law of any administrative law judge consistent with the standards for the scope of review to be applied by the head of the agency as set forth in that section and applicable case law.

b. Nothing in this amendatory and supplementary act shall be construed to affect the conduct of any contested case initiated prior to the effective date of this act, or the making of any administrative adjudication in such contested case.

6. Section 1 of P.L.1981, c.27 (C.52:14B-4.1) is amended to read as follows:

C.52:14B-4.1 Rules, submission to Legislature; referral to committee.

1. Every rule hereafter proposed by a State agency shall be submitted by the Office of Administrative Law to the Senate and General Assembly within two business days of its receipt by the office, and the President of the Senate and the Speaker of the General Assembly shall immediately refer the proposed rule to the appropriate committee in each House.

7. Section 3 of P.L.1981, c.27 (C.52:14B-4.3) is amended to read as follows:

C.52:14B-4.3 Concurrent resolution of Legislature to invalidate rules in whole or in part.

3. If, pursuant to Article V, section 4, paragraph 6 of the New Jersey Constitution, the Senate and General Assembly adopt a concurrent resolution invalidating a rule or regulation, in whole or in part, or prohibiting a proposed rule or regulation, in whole or in part, from taking effect, the presiding officer of the House of final adoption shall cause the concurrent resolution to be transmitted to the Office of Administrative Law for publication in the New Jersey Register and the New Jersey Administrative Code as an annotation to the rule or regulation.

8. a. There is established a Regulatory Impact Analysis Advisory Task Force as an advisory body to the Governor and the Legislature, hereinafter referred to as the "task force." The task force shall consist of seventeen members as follows:

(1) the Commissioner of the Department of Environmental Protection; the Commissioner of the Department of Community Affairs; the Commissioner of the Department of Transportation; the Commissioner of the Department of Health and Senior Services; the State Treasurer; the Attorney General; and the Chief Administrative Law Judge, or their designees, who shall serve as ex-officio members;

(2) Six public members to be appointed by the Governor, at least two of whom shall represent business interests in the state and at least one of whom shall be an attorney with experience in administrative law;

(3) Four members of the Legislature, two of whom shall be State Senators appointed by the President of the Senate, no more than one of whom shall be from the same political party, and two of whom shall be Assembly members appointed by the Speaker of the General Assembly, no more than one of whom shall be from the same political party;

(4) The Governor shall designate a chairperson and vice-chairperson from among the members of the task force.

b. The task force shall organize as soon as possible after the appointment of its members. Vacancies shall be filled in the same manner as the original appointments. Members of the task force shall serve without compensation. The task force may request the assistance and services of the employees of any State department, board, bureau, commission, task force or agency as it may require and as may be available to it for its purposes. The task force may meet and hold hearings at any place or places in the State it shall designate.

c. It shall be the objective of the task force to comprehensively review and analyze the current requirements upon agencies to conduct regulatory impact analyses and recommend necessary and appropriate changes to these requirements. In conducting its review and making its recommendations, the task force shall seek to achieve efficiency and accessibility in the regulatory process.

The task force shall review current regulatory impact analyses requirements and determine whether and to what extent the required statements and analyses may be consolidated and streamlined. The task force may consider the following factors, along with any others it deems appropriate:

(1) overall efficiency to departments in determining whether a proposed major rule meets tests for necessity, reasonableness, consistency and non-duplication with existing rules, and in assessing a proposed rule's impact on measurable risks to human health or the environment, cost efficiency, jobs, and paperwork burden;

(2) the costs to regulated parties for compliance; and

(3) the nature, number and size of parties to be regulated or affected by the rule.

d. The task force shall issue to the Governor, the Senate President and the Speaker of the General Assembly a report of its findings, including any recommendations for legislative changes to the Administrative Procedure Act, no later than one year from the date that the task force convenes, and the task force shall dissolve 60 days after the issuance of the report.

C.52:14B-4.1a Compliance with interagency rules required; OAL review for clarity.

9. a. The director is authorized to refuse to accept from an agency a notice of proposal or notice of adoption which adopts, readopts or amends a rule or regulation, if the director determines that the rule or regulation and its accompanying materials do not comply satisfactorily with the interagency rules of the director. The State agency shall not be authorized

to adopt, readopt or amend a rule or regulation where notice of proposal or notice of adoption is refused by the director in accordance with this provision, except by proposing the adoption, readoption or amendment in compliance with agency rules.

b. The Office of Administrative Law, upon its review and determination, shall not accept for publication any notice of intention to adopt, readopt or amend a rule or regulation, a proposed rule, summary of the proposed rule, regulatory impact analysis, or other accompanying materials which lacks a standard of clarity.

As used in this section, "standard of clarity" means the document is written in a reasonably simple and understandable manner which is easily readable. The document is drafted to provide adequate notice to affected persons and interested persons with some subject matter expertise. The document conforms to commonly accepted principles of grammar. The document contains sentences that are as short as practical, and is organized in a sensible manner. The document does not contain double negatives, confusing cross references, convoluted phrasing or unreasonably complex language. Terms of art and words with multiple meanings that may be misinterpreted are defined. The document is sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, readoption or amendment of the rule or regulation.

c. The provisions of subsection b. of this section shall not apply to any administrative rule that a State agency adopts to conform to a model code, federal rule, interstate agreement or other similar regulatory measure not written by the State agency but incorporated into an administrative rule. The State agency shall append to the proposed rule for publication a written statement describing the rule which complies with subsection b. of this section.

d. The Governor may, upon written request of a State agency, waive the requirements of this section with respect to the repromulgation, without amendment, of any rule or provision of a rule.

C.52:14B-5.1 Expiration of rules in five years; continuation.

10. a. Every rule in effect on the enactment date of P.L.2001, c.5 (C.52:14B-4.1a et al.) shall expire five years following the effective date of this act unless a sooner expiration date has been established for the rule.

b. Every rule adopted on or after the effective date of P.L.2001, c.5 (C.52:14B-4.1a et al.) shall expire five years following the effective date of the rule unless a sooner expiration date has been established for the rule. The expiration date shall be included in the adoption notice of the rule in the New Jersey Register and noted in the New Jersey Administrative Code.

c. An agency may continue in effect an expiring rule for a five year period by duly proposing and readopting the rule prior to its expiration. Upon the filing of a notice of proposed readoption, the expiration date of the rule shall be extended for 180 days, if such notice is filed prior to the expiration of the rule.

d. The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

e. This section shall not apply to any rule repealing a rule or any rule prescribed by federal law or whose expiration would violate any other federal or State law, in which case the federal or State law shall be cited in the publication of the rule.

Repealer.

11. Section 2 and sections 4 through 7, inclusive, of P.L.1981, c.27 (C.52:14B-4.2 and 52:14B-4.4 through 52:14B-4.7) are repealed.

12. This act shall take effect on the first day of the sixth month following enactment but shall not apply to any rule proposed in the New Jersey Register or to any contested case filed prior to the effective date.

Approved January 16, 2001.