

CHAPTER 215

AN ACT concerning State agency rule-making and supplementing P.L.1968, c.410 (C.52:14B-1 et seq.).

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

C.52:14B-3a Regulations relative to State agency rule-making; “regulatory guidance document” defined.

1. a. A State agency shall follow the administrative rule-making requirements set forth in the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and shall only implement rules that have been adopted in accordance with those rule-making requirements.

b. No State agency shall utilize regulatory guidance documents that have not been adopted as rules in accordance with P.L.1968, c.410 unless the agency makes such documents readily available to the regulated community through appropriate means, including but not limited to posting in a prominent place on the website for the agency.

c. A regulatory guidance document that has not been adopted as a rule pursuant to P.L.1968, c.410, shall not:

(1) impose any new or additional requirements that are not included in the State or federal law or rule that the regulatory guidance document is intended to clarify or explain; or

(2) be used by the State agency as a substitute for the State or federal law or rule for enforcement purposes.

d. As used in this section, “regulatory guidance document” means any policy memorandum or other similar document used by a State agency to provide technical or regulatory assistance or direction to the regulated community to facilitate compliance with a State or federal law or a rule adopted pursuant to P.L.1968, c.410, but shall not include technical manuals adopted by the Department of Environmental Protection pursuant to section 1 of P.L.1991, c.422 (C.13:1D-111).

e. Nothing in this section shall be construed to require the disclosure of any information or record that is protected from disclosure by law, court order or rule of court, or to abrogate or erode any privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law.

2. This act shall take effect immediately.

Approved January 17, 2012.