

52:14B-1 Short title

This act shall be known and may be cited as the "Administrative Procedure Act."

52:14B-2 Definitions.

As used in this act:

"Administrative adjudication" or "adjudication" includes any and every final determination, decision, or order made or rendered in any contested case.

"Administrative rule" or "rule," when not otherwise modified, means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases.

"Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing, but shall not include any proceeding in the Division of Taxation, Department of the Treasury, which is reviewable de novo by the Tax Court.

"Director" means the Director and Chief Administrative Law Judge of the Office of Administrative Law, unless otherwise indicated by context.

"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.

"Head of the agency" means and includes the individual or group of individuals constituting the highest authority within any agency authorized or required by law to render an adjudication in a contested case.

"License" includes the whole or part of any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law.

"Secretary" means the Secretary of State.

"State agency" or "agency" shall include each of the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor.

"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.

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

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. A complete list of the agency's permits, fees, violations, penalties, deadlines, processing times, and appeals procedures shall also be made available for public viewing through publication on the agency's Internet website;
- (3) make available for public viewing, through publication on the agency's Internet website, and through any other means, all final agency 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) make available for public viewing, through publication on the agency's Internet website, all of the agency's rule-making and public hearing notices, publicity documents, press releases, final and non-confidential agency reports, and rule-making petitions received by the agency pursuant to subsection (f) of section 4 of P.L.1968, c.410 (C.52:14B-4); and
- (5) 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.

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

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.

52:14B-3.1 Findings, declarations

The Legislature finds and declares that:

a. Under the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) all interested persons are afforded reasonable opportunity to submit data, views or arguments, orally or in writing, during any proceedings involving a permit decision;

b. Persons who have particularized property interests or who are directly affected by a permitting

decision have constitutional and statutory rights and remedies;

c. To allow State agencies without specific statutory authorization to promulgate rules and regulations which afford third parties, who have no particularized property interests or who are not directly affected by a permitting decision, to appeal that decision would give rise to a chaotic unpredictability and instability that would be most disconcerting to New Jersey's business climate and would cripple economic development in our State; and

d. It is, therefore, altogether fitting and proper, and within the public interest, to prohibit State agencies from promulgating rules and regulations which would allow third party appeals of permit decisions unless specifically authorized to do so by federal law or State statute.

52:14B-3.2 Definitions

As used in this act:

"Permit decision" means a decision by a State agency to grant, deny, modify, suspend or revoke any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"State agency" or "agency" means and includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, councils, authorities, offices or officers within any such departments which are authorized to grant, deny, modify, suspend, or revoke a license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"Third party" means any person other than:

a. An applicant for any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law;

b. A State agency; or

c. A person who has particularized property interest sufficient to require a hearing on constitutional or statutory grounds.

52:14B-3.3 Appeal of permit decision by third party

a. Except as otherwise required by federal law or by a statute that specifically allows a third party to appeal a permit decision, a State agency shall not promulgate any rule or regulation that would allow a third party to appeal a permit decision.

b. Nothing herein shall be construed as abrogating or otherwise limiting any person's constitutional and statutory rights to appeal a permit decision.

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

(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 any 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 for public viewing through publication on the agency's Internet website. 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. Additional publicity 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, including the agency's Internet website. 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, and make available for public viewing through publication on the agency's Internet website, a statement setting forth a summary of the proposed rule, as well as 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, an agriculture industry impact statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3), a housing affordability impact statement, a smart growth development impact statement, as provided in section 31 of P.L.2008, c.46 (C.52:14B-4.1b), and a racial and ethnic community criminal justice and public safety impact statement as required in section 3 of P.L.2017, c.286 (C.2C:48B-2);

(3) Afford all interested persons a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule, including any written submissions that are received by the agency through its e-mail systems or electronic mailing lists. 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, shall publish such hearing notice on its Internet website, and shall conduct the hearing 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; and

(4) Prepare for public distribution, and make available for public viewing through publication on the agency's Internet website, 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, comments, 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 P.L.1968, c.410 (C.52:14B-5) 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, the agency may proceed to adopt the rule without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable. The agency shall publish, on its Internet website, a summary of any rule adopted pursuant to this subsection, and the statement of reasons for the agency's finding that an imminent peril exists. Any rule adopted pursuant to this subsection 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 P.L.1968, c.410 (C.52:14B-1 et seq.). A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et seq.) 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. Such notice shall be distributed to interested persons through the use of an electronic mailing list or similar type of subscription-based e-mail service, and made available for public viewing through publication on the agency's Internet website. The 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 electronic mailing lists. 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. Such petition may be submitted to the agency through mail, e-mail, electronic mailing list, or through any other means. Each agency shall prescribe by rule the form for the petition and the procedure for the 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 by an agency 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, and shall be made available for public viewing through publication on the agency's Internet website.

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. Hearing notice shall also be made available for public viewing through publication on the agency's Internet website. 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.

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

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.

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

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.

52:14B-4.1b Housing affordability impact analysis.

a. In proposing a rule for adoption, the agency involved shall issue a housing affordability impact analysis regarding the rule, which shall be included in the notice of a proposed rule as required by

subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). Each housing affordability impact analysis shall contain:

- (1) A description of the types and an estimate of the number of housing units to which the proposed rule will apply; and
- (2) A description of the estimated increase or decrease in the average cost of housing which will be affected by the regulation.

This subsection shall not apply to any proposed rule which the agency finds would impose an insignificant impact, either because the scope of the regulation is minimal, or there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

b. In proposing a rule for adoption, the agency involved shall issue a smart growth development impact analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). Each smart growth development impact analysis shall contain:

- (1) A description of the types and an estimate of the number of housing units to which the proposed rule will apply;
- (2) A description of the estimated increase or decrease in the availability of affordable housing which will be affected by the regulation; and
- (3) A description as to whether the proposed rule will affect in any manner new construction within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

This subsection shall not apply to any proposed rule which the agency finds would impose an insignificant impact, either because the scope of the regulation is minimal, or there is an extreme unlikelihood that the regulation would evoke a change in the housing production within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

For the purposes of complying with this subsection, and in order to avoid duplicative action, an agency may consider a series of closely related rules as one rule.

c. For the purposes of this section, "types" means housing groups distinguished by the following categories: housing reserved for occupancy by very low, low and moderate and middle income households, respectively; single family, two-family, and multi-family housing; rental housing and for-sale housing.

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

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.

52:14B-4.8 Votes on concurrent resolutions; recordation

A vote by the Senate or General Assembly on a concurrent resolution on any action authorized by this act shall be a recorded vote.

52:14B-4.9 Proposed rule which revises, rescinds or replaces proposed, existing or suspended rule as new rule

Any rule proposed by a State agency which revises, rescinds or replaces either (1) any proposed or existing rule or (2) any rule which has been suspended shall be considered as a new rule and shall be subject to the provisions of this act and the act to which it is a supplement.

52:14B-4.10 Changes to agency rule, certain, upon adoption.

a. Notwithstanding any other provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or rule adopted pursuant thereto, to the contrary, where, following a notice of proposal and upon conclusion of the public comment period, an agency determines that it would be appropriate to make substantial changes to the proposed rule upon adoption, the agency may follow the procedure set forth in this section instead of filing a new notice of proposal.

As used in this section, "substantial changes" means any changes to a proposed rule that would significantly: enlarge or curtail who and what will be affected by the proposed rule; change what is being prescribed, proscribed or otherwise mandated by the rule; or enlarge or curtail the scope of the proposed rule and its burden on those affected by it.

b. Upon making a determination that it would be appropriate to make substantial changes to a proposed rule upon adoption, an agency may submit a public notice to the Office of Administrative Law setting forth the proposed changes. The public notice shall include: (1) a description of the changes between the rule as originally proposed and the new proposed changes; (2) the specific reasons for proposing the additional changes; (3) a discussion of how the new proposed changes would alter the impact statements and analyses included in the notice of proposal; (4) a report listing all parties submitting comments on the originally proposed rule provisions subject to the proposed additional changes, summarizing the content of the submissions on those provisions, and providing the agency's response to the data, views and arguments contained in the submissions; and (5) the manner in which interested persons may present their views on the new proposed changes.

c. (1) Upon receipt of a public notice pursuant to subsection b. of this section, the Office of Administrative Law shall publish the notice in the New Jersey Register.

(2) The agency submitting the public notice containing substantial changes to a notice of proposal shall comply with the notice requirements set forth in paragraphs (1) and (3) of subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4), and 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.

d. 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 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). As part of the notice of adoption, the agency shall prepare for public distribution a report 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. A notice of proposal that includes a public notice pursuant to this section shall expire 18 months after the date of publication of the notice of proposal in the New Jersey Register.

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

(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.

52:14B-5.1 Expiration of rules; continuation.

a. (Deleted by amendment, P.L.2011, c.45)

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 seven 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. (1) Notwithstanding any other provision of P.L.1968, c.410 (C.52:14B-1 et seq.), or rule adopted pursuant thereto, to the contrary, in the case of a proposed readoption without changes to the existing rule, or a proposed readoption with technical changes as approved by the Office of Administrative Law, an agency may continue in effect an expiring rule for a seven-year period by filing a public notice with the Office of Administrative Law for publication in the New Jersey Register at least 30 days prior to the

expiration date of the rule. The notice pursuant to this paragraph shall include the citation for the rule, a general description of the rule, the specific legal authority under which the rule is authorized, and the new expiration date of the rule. The notice pursuant to this paragraph shall be effective upon filing with the Office of Administrative Law.

Upon the receipt of a public notice pursuant to this paragraph, the Office of Administrative Law shall publish the notice in the New Jersey Register. The new expiration date of the rule shall be noted in the New Jersey Administrative Code.

As used in this paragraph, "technical changes" means changes to: correct spelling, grammar and punctuation; correct codification; update contact information; or correct cross-references.

(2) In the case of a proposed re adoption of an expiring rule with substantive changes, an agency may continue the expiring rule for a seven-year period by duly proposing the re adoption with substantive changes and re adopting the rule prior to its expiration. Upon the filing of a notice of proposed re adoption with substantive changes, the expiration date of the rule shall be extended for 180 days, if such notice is filed prior to the expiration of the rule.

As used in this paragraph, "substantive changes" means any changes that are not technical changes as defined in paragraph (1) of this subsection.

d. (1) 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.

(2) The Governor may, upon the request of an agency head within five days after the expiration of a rule, restore the effectiveness of an expired rule as of its expiration date, for a period to be specified by the Governor, in order to effect the re adoption of the rule in accordance with subsection c. of this section.

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.

52:14B-7 New Jersey Administrative Code; New Jersey Register; publication

(a) The director shall compile, index, and publish a publication to be known as the "New Jersey Administrative Code," containing all effective rules adopted by each agency. The code shall be periodically supplemented or revised, and shall remain under the control and direction of the Office of Administrative Law regardless of the method or medium chosen to store, maintain or distribute it.

(b) The director shall publish a bulletin, at least monthly, to be known as the "New Jersey Register" setting forth: (1) the text of all rules filed during the preceding month, and (2) such notices as shall have been submitted pursuant to this act.

(c) The director shall issue annually a schedule for the filing of documents for publication in the New Jersey Register. The director may omit from the New Jersey Register or compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available by the adopting agency on application thereto, and if the register or code contains a notice stating the general subject matter of the omitted rule and stating the

manner in which a copy thereof may be obtained. The director may include within the New Jersey Register and the New Jersey Administrative Code any document, material or information which the director may deem appropriate and convenient.

(d) At least one copy of the New Jersey Administrative Code and copies of the New Jersey Register and compilations shall be made available upon request to the Governor, the head of each principal department, the Office of Legislative Services, the State Library and to such other State agencies and public officials as the director may designate free of charge. The director shall provide for the publication, sale and distribution of the Code and Register to the public by whatever means, including entering into contractual or licensing arrangements, most likely to ensure the widest dissemination possible.

(e) (Deleted by amendment, P.L.1993, c.343).

(f) The director may determine the order in which such rules or any parts thereof are to be presented in the New Jersey Register and the New Jersey Administrative Code; the director may number or renumber the parts, paragraphs and sections into which such rules may be divided; the director may further divide or combine existing parts, paragraphs and sections and may provide for appropriate digests, indices and other related material. The director shall not, however, change the language of any existing rule excepting a title or explanatory caption; but shall recommend any such changes as the director may deem advisable to the administrative agency authorized to adopt such rule. The director may periodically review the New Jersey Administrative Code for expired rules and shall remove such rules upon notice to the appropriate agency head.

(g) The director is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this act.

52:14B-7.1 OAL to establish, maintain Internet publication of a State rule-making database.

a. The Office of Administrative Law shall establish and maintain, at a publicly accessible location on its Internet website, a searchable database that identifies the number, nature, and current status of all pending or proposed rule-making actions in the State. The database shall include written descriptions and listings of all such pending or proposed State rule-making actions, and shall additionally incorporate the use of charts, tables, graphs, and other graphics or visual aids, as necessary or appropriate, to provide members of the public with a full, complete, and easily comprehensible overview of pending or proposed rule-making actions in the State.

b. (1) The database established and maintained pursuant to subsection a. of this section shall include, with respect to each proposed rule-making action, a summary description that indicates:

(a) the title or subject matter of the rule-making action;

(b) the State agency responsible for the rule-making action;

(c) the identification number, if any, that is associated with the rule-making action;

(d) the types or groups of persons who are the subject of, or who will, or are likely to be, affected by, the rule-making action;

- (e) the legal authority for the rule-making action;
- (f) the date on which the rule-making action was initiated by the State agency;
- (g) the legal deadline, if any, that is associated with the rule-making action;
- (h) a concise abstract or synopsis describing the basis for, and pertinent factors necessitating, the rule-making action; and
- (i) a timetable showing the history of the rule-making action.

(2) The summary description required by this subsection shall additionally include a brief statement that identifies the potential impacts of the rule-making action on the State and its residents, and the anticipated significance of those impacts. At a minimum, this statement shall indicate:

(a) the type and potential significance of any expected socio-economic impacts associated with the rule-making action, as determined in accordance with the provisions of paragraph (2) of subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4);

(b) the number of jobs that will, or are likely to, be generated or lost as a result of the rule-making action, as determined in accordance with the provisions of paragraph (2) of subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4);

(c) the type and significance of any expected agricultural industry impacts associated with the rule-making action, as determined in accordance with the provisions of section 7 of P.L.1998, c.48 (C.4:1C-10.3) and paragraph (2) of subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4);

(d) whether the State agency has prepared, or will prepare, a regulatory flexibility analysis in connection with the rule-making action, in accordance with the provisions of P.L.1986, c.169 (C.52:14B-16 et seq.) and paragraph (2) of subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4); and

(e) if a regulatory flexibility analysis has been prepared in connection with the rule-making action, the estimated number of small businesses that will, or are likely to, be affected by the rule-making action.

c. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Office of Administrative Law may require each State agency to provide the information to be included in the database summary description under subsection b. of this section in association with any notice of proposed rule-making that is submitted by the agency prior to, on, or after, the effective date of this act. The form and manner in which the information will be provided shall be determined by the Office of Administrative Law.

d. The database established and maintained pursuant to subsection a. of this section shall also include distinct listings or graphics that identify the total number of pending rule-making actions by: (1) State agency; (2) rule-making type and stage; and (3) current length, in 30-day intervals, of the State agency review associated therewith, as determined by looking to the date of each rule-making action's initiation by the State agency.

e. The Office of Administrative Law shall make regular and timely updates to the database established

pursuant to subsection a. of this section to ensure that it reflects the most current information pertaining to rule-making actions undertaken by each State agency. The Office of Administrative Law shall indicate, on its Internet website, the date on which the most recent database update was performed pursuant to this subsection.

52:14B-8 Declaratory rulings

Subject to the provisions of section 4(b) and 4(e) of chapter 20, laws of 1944, as amended and supplemented (C. 52:17A-4b and 4e), an agency upon the request of any interested person may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. A declaratory ruling shall bind the agency and all parties to the proceedings on the state of facts alleged. Full opportunity for hearing shall be afforded to the interested parties. Such ruling shall be deemed a final decision or action subject to review in the Appellate Division of the Superior Court. Nothing herein shall affect the right or practice of every agency in its sole discretion to render advisory opinions.

52:14B-9 Notice and hearing in contested cases.

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include in addition to such other information as may be deemed appropriate:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond, appear and present evidence and argument on all issues involved.

Pre-hearing conferences may be conducted, as prescribed by the director.

Witnesses may be permitted to testify, and motions may be considered, by means of a telephone or video conference call, as prescribed by the director and when the judge finds there is good cause for permitting the witness to testify by telephone or video conference.

(d) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, or consent order.

(e) Oral proceedings or any part thereof shall be transcribed on request of any party at the expense of such party.

(f) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(g) Unless otherwise provided by any law, agencies may place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing.

52:14B-9.1 Process for consideration and settlement of contested case.

Each State agency shall develop and implement a process for the consideration and settlement of a contested case. The process shall be set forth in writing and filed with the Director of the Office of Administrative Law. The director shall assist each State agency in the development of the process to ensure uniformity to the extent practicable. The head of an agency is hereby authorized to compromise and settle, at the discretion of the agency head, any penalty pursuant to such a settlement process as may appear appropriate and equitable under all of the circumstances, unless the compromise is specifically prohibited by State or federal law.

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

In a contested case:

(a) (1) 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 necessitate undue consumption of time or 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.

(2) Where the case involves a permitting or licensing decision of the Department of Environmental Protection, the department shall be required to produce and certify a permitting record within 30 days after the filing of the contested case. This deadline may be extended by an administrative law judge upon the unanimous agreement of the parties. The production and certification of the department's permitting record, in accordance with this paragraph, shall not limit the ability of the parties to further supplement the record.

(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.

Unless the head of the agency or a party requests that the recommended report and decision be filed in writing, the recommended report and decision of the administrative law judge may be filed orally in such appropriate cases as prescribed by the director and if a transcript has been requested pursuant to subsection (e) of section 9 of P.L.1968, c.410 (C.52:14B-9).

An administrative law judge may file a recommended report and decision in the form of a checklist in such appropriate cases and formats as prescribed by the director after consultation with each State agency.

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 a single extension of not more than 45 days. Any additional extension of time shall be subject to, and contingent upon, the unanimous agreement of the parties.

(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.

(f) The head of an agency may order that, in certain appropriate cases, the recommended report and decision of the administrative law judge shall be deemed adopted, immediately on filing thereof with the agency, as the final decision of the head of the agency. The appropriate cases shall be described in a written order issued by the head of the agency, filed with the director, and made available to the public as a government record. The order shall not include any contested case for which the head of the agency is specifically required by State or federal law to review the recommended report and decision and adopt the final decision. The head of the agency may revise or revoke an order, issued pursuant to this subsection, whenever it is deemed appropriate. The order shall apply to all appropriate contested cases commenced with the agency after the order's issuance and until the order is rescinded or modified. In such appropriate contested cases, the head of the agency shall not have the opportunity to reject or modify the administrative law judge's recommended report and decision pursuant to subsection (c) of this section and the final decision by the administrative law judge shall comply with the requirements of and shall be given the same effect as a final decision of the head of the agency pursuant to subsection (d) of this section.

(g) Whenever the parties in a contested case stipulate to the factual record, and agree that there are no genuine issues of material fact to be adjudicated, the head of the agency may, in his discretion, render a final agency decision on the matter without obtaining the prior input of, or a recommended report and decision from, an administrative law judge.

52:14B-11 Revocation, refusal to renew license, hearing required; exceptions

No agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with the provisions of this act applicable to contested cases. If a licensee has, in accordance with law and agency rules, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency. Any agency that has authority to suspend a license without first holding a hearing shall promptly upon exercising such authority afford the licensee an opportunity for hearing in conformity with the provisions of this act.

This section shall not apply (1) where a statute provides that an agency is not required to grant a hearing in regard to revocation, suspension or refusal to renew a license, as the case may be; or (2) where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a judgment of a court of competent jurisdiction; or (3) where the suspension or refusal to renew is based solely upon failure of the licensee to maintain insurance coverage as required by any law or regulation; or (4) where the suspension or refusal to renew a motor vehicle registration is based upon the failure of the vehicle to be presented for inspection or to satisfy the inspection requirements of chapter 8 of Title 39 of the Revised Statutes.

52:14B-12 Administrative review

Whenever under statute or agency rule there is a mode of administrative review within an agency, such review shall remain unimpaired and any judicial review shall be from the final action of the agency. The administrative review within the agency need not comply with the requirements for the conduct of contested cases.

52:14B-13 Effect of act on prior proceedings

Nothing in this act shall be deemed to affect any agency proceeding initiated prior to the effective date hereof.

52:14B-14 Severability

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

52:14B-15 General repealer

All acts and parts of acts which are inconsistent with the provisions of this act are, to the extent of such inconsistency, hereby repealed; but such repeal shall not affect pending proceedings.

52:14B-16 Short title

This act shall be known and may be cited as the "New Jersey Regulatory Flexibility Act."

52:14B-17 "Small business" defined

As used in this act, "small business" means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.

52:14B-18 Approaches

In developing and proposing a rule for adoption, the agency involved shall utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small businesses of different types and of differing sizes. Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

- a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small businesses;
- b. The use of performance rather than design standards; and
- c. An exemption from coverage by the rule, or by any part thereof, for small businesses so long as the public health, safety, or general welfare is not endangered.

52:14B-19 Regulatory flexibility analysis

In proposing a rule for adoption, the agency involved shall issue a regulatory flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L. 1968, c. 410 (C. 52:14B-4). Each regulatory flexibility analysis shall contain:

- a. A description of the types and an estimate of the number of small businesses to which the proposed rule will apply;
- b. A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small business is likely to need in order to comply with the requirements;
- c. An estimate of the initial capital costs and an estimate of the annual cost of complying with the rule,

with an indication of any likely variation in the costs for small businesses of different types and of differing sizes; and

d. An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small businesses.

This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small businesses. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L. 1968, c. 410 (C. 52:14B-4).

52:14B-20 Considered one rule

In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with section 4 of this act.

52:14B-21 Description of effects of rule

In complying with the provisions of section 4 of this act, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

52:14B-21.1 Definitions relative to creation of uniform application form.

As used in this act:

"Department" means the Department of State.

"Financial assistance program" or "program" means any program offered by a State agency to a small business that allows a small business to be deemed eligible to receive a grant or loan of monies pursuant to State law.

"Small business" or "business" means a business entity that employs not more than 50 full-time employees or the equivalent thereof and qualifies as a small business concern within the meaning of the federal "Small Business Act," Pub.L.85-536 (15 U.S.C. s.631 et seq.).

"State agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission, or other instrumentality within or created by such principal department, and any independent State authority, commission, instrumentality, or agency.

52:14B-21.2 Establishment, maintenance of program.

The department shall, in consultation with the New Jersey Economic Development Authority, establish and maintain a program to assist small businesses in identifying financial assistance programs, offered by any State agency, for which the business may be eligible. The department shall create, modify, and update, as necessary, a uniform application form for the purpose of gathering basic operational and financial information, and any additional information as deemed necessary by the department, from small businesses seeking assistance under this program. The application form shall be created, modified, and updated, as necessary, in a manner that requires a small business to provide the business's basic operational and financial information on the form.

52:14B-21.3 Rules, regulations.

The department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to effectuate the purposes of this act.

52:14B-22 State policy to reduce confusion, costs in complying with State regulations

It is the declared policy of the State to reduce, wherever practicable, confusion and costs involved in complying with State regulations. Confusion and costs are increased when there are multiple regulations of various governmental entities imposing unwarranted differing standards in the same area of regulated activity. It is in the public interest that State agencies consider applicable federal standards when adopting, readopting or amending regulations with analogous federal counterparts and determine whether these federal standards sufficiently protect the health, safety and welfare of New Jersey citizens.

52:14B-23 Administrative agency standards, statement relative to federal requirements

On or after the effective date of this act, each administrative agency that adopts, readopts or amends any rule or regulation described in section 3 of this act shall, in addition to all the requirements imposed by existing law and regulation, include as part of the initial publication and all subsequent publications of such rule or regulation, a statement as to whether the rule or regulation in question contains any standards or requirements which exceed the standards or requirements imposed by federal law. Such statement shall include a discussion of the policy reasons and a cost-benefit analysis that supports the agency's decision to impose the standards or requirements and also supports the fact that the State standard or requirement to be imposed is achievable under current technology, notwithstanding the federal government's determination that lesser standards or requirements are appropriate.

52:14B-24 Applicability of act relative to federal requirements

This act shall apply to any rule or regulation that is adopted, readopted or amended under the authority of or in order to implement, comply with or participate in any program established under federal law or under a State statute that incorporates or refers to federal law, federal standards or federal requirements.

52:14B-25 Definitions relative to certain mandate requirements, procedures for small municipalities.

a. For the purposes of this section:

"State mandate" means a program, service or activity that is to be performed or implemented by a local unit for or on behalf of its residents, which results in an added net cost to the local unit, and which is mandated in any statute enacted by the Legislature either prior to or after the effective date of this act. A "state mandated program" shall not include the following: any activity pertaining to a statute carrying criminal penalties; any mandate required by or arising from a court order or judgment; any program or service which is provided at local option under permissive State laws, rules, regulations or orders; any program which is required by private, special or local laws pursuant to Article IV, Section VII, paragraphs 8 and 10 of the State Constitution; any program required by or arising from an executive order of the Governor in exercising emergency powers granted by law; or any program mandated by federal law, rule, regulation or order.

"Small municipality" shall mean a municipality that has a limited population or geographic area according to criteria promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs.

b. In developing and proposing a rule for adoption, the agency involved shall utilize approaches which

will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small municipalities. Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

- (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small municipalities;
- (2) The use of performance rather than design standards; and
- (3) An exemption from coverage by the rule, or by any part thereof, for small municipalities so long as the public health, safety, or general welfare is not endangered, or if an exemption is not a possibility, the use of alternative methods of implementing the requirements of the rule.

c. In proposing a rule for adoption, the agency involved shall issue a State mandate flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). Each State mandate flexibility analysis shall contain:

- (1) An estimate of the number of small municipalities to which the proposed rule will apply;
- (2) A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small municipality is likely to need in order to comply with the requirements;
- (3) An estimate of the annual cost to a small municipality of complying with the rule; and
- (4) An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small municipalities.

d. This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small municipalities. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

e. In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with the requirements of this section.

f. In complying with the provisions of this section, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

52:14B-26 Definitions relative to State and local agency business permits.

As used in this act:

"Local agency" means any department of a political subdivision of this State, or any division, office, agency, or bureau thereof that issues a permit to a business.

"Permit" means a permit, license, certificate, registration, compliance schedule, or any other form of permission or approval required by law to be issued by a State agency in order to engage in a business

activity, or any other authorization related thereto, whether that authorization is in the form of a permit, approval, license, certification, waiver, letter of interpretation, agreement, or any other executive or administrative decision which allows a business to engage in an activity.

"State agency" means any New Jersey principal department or any division, office, agency, or bureau thereof that issues a permit to a business.

52:14B-27 Periodic review of permits.

a. Consistent with the requirements of applicable statutes, the head of each State agency shall periodically conduct a comprehensive written review of all permits issued by the State agency, in order to identify:

(1) those permits that can be administered through an expedited process;

(2) those permits that are obsolete, are no longer necessary, or cost more to administer than the benefits they provide, and thus should be eliminated so long as the public health, safety, or general welfare is not endangered;

(3) those permits that can have their period of validity extended beyond the scheduled termination date without significant disruption to the efficiency or work of the State agency, so long as the public health, safety, or general welfare is not endangered; and

(4) those permitting procedures that can be better facilitated through the increased incorporation of computer-based technology, such as the Internet, or that can be completed online.

b. The head of each State agency shall include, as part of the comprehensive written review required by subsection a. of this section:

(1) a description of those permits identified pursuant to subsection a. of this section;

(2) a description of the recent actions taken by the State agency to:

(a) eliminate obsolete permits;

(b) extend the period of validity associated with non-obsolete permits;

(c) expedite the State agency's permitting procedures;

(d) facilitate the enhanced use of computer-based and Internet technology in such procedures; and

(e) reduce the number of permits that are backlogged;

(3) recommendations and explanations as to which of the State agency's remaining permitting procedures should be revised or simplified in order to further expedite the issuance of permits by the State agency and increase the use of computer-based technology, such as the Internet, in the State agency's permitting procedures; and

(4) the identification of those rules, regulations, and statutes administered by the State agency that

would need to be revised or eliminated in order to effectuate the changes recommended pursuant to paragraph (3) of this subsection.

c. Upon completion of the comprehensive written review pursuant to subsection a. of this section, the head of each State agency shall submit the review to the Secretary of State or other State officer or employee designated by the Governor pursuant to section 3 of P.L.2011, c.34 (C.52:14B-28).

52:14B-28 System of review of business permits issued.

The Secretary of State or other State officer or employee as the Governor may designate to manage this program within the Department of State shall develop a system of consolidated and contemporaneous review of State and local agency-issued business permits for the purpose of accelerating the process of issuing business permits, eliminating redundancy among different levels of State and local government, and ensuring more consistency in permit issuance. This system shall be adopted by rule pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Under such system, any county or municipality issuing a business permit shall be encouraged and incentivized to voluntarily join in a collaborative effort to manage the permitting process for a business project with any State agency, as applicable to each project, and jointly agree on a process and schedule for a cooperative and contemporaneous handling of business permits and approvals. Any municipality issuing a business permit or approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) shall not be subject to the provisions of this act. A permit or approval related to a federally-funded program or project or a permit or approval that is specified or determined by or pursuant to federal law or regulation shall not be subject to the provisions of this act.

52:14B-29 Designation of contact person.

Concerning any large, complex project having a significant potential employment or investment impact, the Secretary of State or other State officer or employee designated by the Governor pursuant to section 3 of P.L.2011, c.34 (C.52:14B-28) shall designate an employee of the Department of State from among those positions otherwise filled to act as a contact person to be responsible for assisting each business undertaking such project on an individual basis and to continue as the point of contact between that business and all appropriate government entities throughout the permit and approval application process. Concerning projects which require permits from multiple State and local agencies, the Secretary of State or the Governor's designee shall designate an employee of the Department of State from among those positions otherwise filled to guide such projects throughout the process of applying for and receiving any business permit or approval. The duties of the designated contact person shall include:

- a. Developing, from the outset, a checklist of permits to which the applicable agencies agree;
- b. Establishing a detailed course of actions and milestones for the permitting or approval process that shall be agreed to by the applicable agencies;
- c. Reporting any impediments to, or conflicts regarding, milestones to the Secretary of State or the Governor's Designee, and promptly evaluating any disputes, delays, or other issues requiring centralized review; and
- d. Coordinating as needed with the New Jersey Economic Development Authority to ensure that businesses considering investing in this State receive integrated project management of all State and local agency required permits and approvals.

52:14B-30 Report to Governor, Legislature.

a. The Secretary of State, or other State officer or employee designated by the Governor pursuant to section 3 of P.L.2011, c.34 (C.52:14B-28), shall submit, no less than biennially, a report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, summarizing the information contained in the comprehensive written reviews that have been submitted by the various State agencies pursuant to section 2 of P.L.2011, c.34 (C.52:14B-27). In particular, each report shall include:

- (1) a summary of the actions taken by each State agency during the preceding period to:
 - (a) eliminate obsolete permits;
 - (b) extend the period of validity associated with non-obsolete permits;
 - (c) expedite the State agency's permitting procedures;
 - (d) facilitate the enhanced use of computer-based and Internet technology in such procedures; and
 - (e) reduce the number of permits that are backlogged;
 - (2) a description of the remaining permits that each State agency has identified as being obsolete and conducive to elimination;
 - (3) a description of the remaining permits that each State agency has indicated could have their period of validity extended beyond the scheduled termination date;
 - (4) a description of the remaining permitting procedures that each State agency has identified as being conducive to revision, simplification, or the greater incorporation of computer-based technology, such as the Internet;
 - (5) the identification, by name, of the counties and municipalities that are participating in cooperative and contemporaneous handling of business permits and approvals pursuant to section 3 of P.L.2011, c.34 (C.52:14B-28);
 - (6) the identification, by name and project, of the specific employees assigned as designated contact persons to specific projects pursuant to section 4 of P.L.2011, c.34 (C.52:14B-29), as well as a summary of actions taken on behalf of each project, and a description of the outcome of each project that was completed during the preceding period; and
 - (7) any information pertaining to other matters as the Secretary of State or the Governor's designee may find material.
- b. The report required by subsection a. of this section shall be posted on the Department of State web site.
- c. After due consideration of the report submitted in accordance with subsection a. of this section, the Governor may:

(1) direct the head of each State agency to make such changes to the State agency's permitting systems as may be appropriate, pursuant to current rules, regulations, and statutes, in order to effectuate those parts of the report the Governor deems necessary; and

(2) seek from the Legislature changes in the statutory law, including the amendment, repeal, or supplementation of various statutes as the Governor believes appropriate, in order to effectuate those parts of the report the Governor deems necessary.

d. The head of each State agency shall adopt such rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and perform such duties, as the head of the State agency may deem necessary, in order to effectuate the regulatory changes identified in section 2 of P.L.2011, c.34 (C.52:14B-27) and this section.

52:14B-31 Information required to be posted on State agency website.

a. Notwithstanding any law, rule, or regulation to the contrary, each State 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 or regulation 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 paragraph (1) of this subsection.

b. (1) An agency shall make regular and timely updates to the full text documents and URL addresses posted on its Internet website pursuant to subsection a. of this section, and shall take any other reasonable action necessary to ensure that the posted documents and URL addresses accurately reflect, or are directly linked to, as the case may be, the most recent version of the associated law, rule, or regulation, 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 paragraph.

(2) An agency that posts one or more URL addresses on its Internet website pursuant to subsection a. of this section shall additionally: (a) verify, on a regular basis, the functionality of each URL address; and (b) 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.