

§8052. Rulemaking

1. Notice; public hearing. Prior to the adoption of any rule, the agency shall give notice as provided in section 8053 and may hold a public hearing, except that a public hearing must be held if otherwise required by statute or requested by any 5 interested persons or if the rule is a major substantive rule as defined in section 8071, subsection 2, paragraph B.

A public meeting or other public forum held by an agency for any purpose that includes receiving public comments on a proposed agency rule is a public hearing and is subject to all the provisions of this subchapter regarding public hearings.

[PL 2007, c. 581, §2 (AMD).]

2. Requirements. Any public hearing shall comply with any requirements imposed by statute, but shall not be subject to subchapter IV. Any public hearing shall be held and conducted as follows.

A. In the case of a rule authorized to be adopted by more than one agency member, at least 1/3 of the agency members shall be present. [PL 1981, c. 524, §2 (NEW).]

B. In the case of a rule authorized to be adopted by a single agency member, either the agency member, a person in a major policy-influencing position, as listed in chapter 71, or a designee who has responsibility over the subject matter to be discussed at the hearing shall hold and conduct the hearing. [PL 1993, c. 362, §2 (AMD).]

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3. Statements and arguments filed. When a public hearing is held, written statements and arguments concerning the proposed rule may be filed with the agency within 10 days after the close of the public hearing, or within such longer time as the agency may direct.

[PL 1977, c. 551, §3 (NEW).]

4. Relevant information considered. The agency shall consider all relevant information available to it, including, but not limited to, economic, environmental, fiscal and social impact analyses and statements and arguments filed, before adopting any rule.

[PL 1991, c. 632, §1 (AMD).]

5. Written statement adopted. At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule. The agency shall list the names of persons whose comments were received, including through testimony at hearings, the organizations the persons represent and summaries of their comments. The agency shall address the specific comments and concerns expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule.

A. If the same or similar comments or concerns about a specific issue were expressed by different persons or organizations, the agency may synthesize these comments and concerns into a single comment that accurately reflects the meaning and intent of these comments and concerns to be addressed by the agency, listing the names of the persons who commented and the organizations they represent. [PL 1993, c. 446, Pt. A, §19 (AMD).]

B. A rule may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule. The agency shall maintain a file for each rule adopted that must include, in addition to other documents required by this Act, testimony, comments, the names of persons who commented and the organizations they represent and information relevant to the rule and considered by the agency in connection with the formulation, proposal or adoption of a rule. If an agency determines that a rule that the agency intends to adopt is substantially different from the proposed

rule, the agency shall request comments from the public concerning the changes from the proposed rule. The agency may not adopt the rule for a period of 30 days from the date comments are requested pursuant to this paragraph. Notice of the request for comments must be published by the Secretary of State in the same manner as notice for proposed rules. [PL 2011, c. 380, Pt. NNN, §1 (AMD).]

C. If the adoption under this subsection is final adoption of a major substantive rule under subchapter II-A, the agency must include in its written statement citation of the legislative act authorizing final adoption of that rule; or, if authorization is the result of failure of the Legislature to act under section 8072, subsection 7, the agency must indicate that fact and identify the date the agency filed the rule for review under section 8072. [PL 1997, c. 196, §1 (NEW).]
[PL 2011, c. 380, Pt. NNN, §1 (AMD).]

5-A. Impact on small business. In adopting rules, the agencies shall seek to reduce any economic burdens through flexible or simplified reporting requirements and may seek to reduce burdens through flexible or simplified timetables that take into account the resources available to the affected small businesses. The agency may consider clarification, consolidation or simplification of compliance or reporting requirements. For the purposes of this subsection, "small business" means businesses that have 20 or fewer employees.

Prior to the adoption of any proposed rule that may have an adverse impact on small businesses, the agency shall prepare an economic impact statement that includes the following:

A. An identification of the types and an estimate of the number of the small businesses subject to the proposed rule; [PL 2007, c. 181, §1 (NEW).]

B. The projected reporting, record-keeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record; [PL 2007, c. 181, §1 (NEW).]

C. A brief statement of the probable impact on affected small businesses; and [PL 2007, c. 181, §1 (NEW).]

D. A description of any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the proposed rule. [PL 2007, c. 181, §1 (NEW).]

[PL 2007, c. 181, §1 (AMD).]

6. Effective date. No rule, except emergency rules adopted under section 8054, becomes effective until at least 5 days after filing with the Secretary of State under section 8056, subsection 1, paragraph B.

When the effective date of a rule is contingent upon the occurrence or nonoccurrence of an event, notification of the occurrence or nonoccurrence must be filed with the Secretary of State when known. [PL 1993, c. 362, §3 (AMD).]

7. Adoption of rule. A rule may not take effect unless:

A. The agency adopts it within 120 days of the final date by which data, views or arguments may be submitted to the agency for consideration in adopting the rule; and [PL 1985, c. 39, §1 (NEW).]

B. This adopted rule is approved by the Attorney General as to form and legality, as required by section 8056, within 150 days of the final date by which those comments may be submitted. [PL 1985, c. 39, §1 (NEW).]

The final date for comments may be extended if notice of doing so is published within 14 days after the most recently published comment deadline, in the consolidated notice referred to in section 8053.

[PL 1995, c. 373, §3 (AMD).]

8. Appropriate reference to underlying federal and state laws and regulations. At the time of adoption of any rule, the agency shall refer with particularity to any underlying federal or state law or regulation which serves as the basis of the rule.

[PL 1985, c. 77, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 551, §3 (NEW). PL 1977, c. 694, §34-A (AMD). PL 1979, c. 425, §4 (AMD). PL 1981, c. 524, §§1-6 (AMD). PL 1985, c. 39, §1 (AMD). PL 1985, c. 77, §1 (AMD). PL 1985, c. 506, §§A2,3 (AMD). PL 1985, c. 680, §§1,2 (AMD). PL 1985, c. 737, §A18 (AMD). PL 1989, c. 574, §§3,4 (AMD). PL 1991, c. 632, §1 (AMD). PL 1993, c. 362, §§2,3 (AMD). PL 1993, c. 446, §A19 (AMD). RR 1995, c. 2, §8 (COR). PL 1995, c. 373, §3 (AMD). PL 1995, c. 463, §1 (AMD). PL 1997, c. 110, §2 (AMD). PL 1997, c. 196, §1 (AMD). PL 2007, c. 181, §1 (AMD). PL 2007, c. 581, §2 (AMD). PL 2011, c. 380, Pt. NNN, §1 (AMD).

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