

P.L.2011, CHAPTER 215, *approved January 17, 2012*
Assembly, No. 2464 (*Third Reprint*)

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

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

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

12 ³[Unless specifically authorized by State law, a]

13 b. No³ State agency shall ³[not]³ utilize regulatory guidance
14 documents ³[unless the documents] that³ have ³not³ been adopted
15 as rules in accordance with P.L.1968, c.410 ³[.

16 ¹b. Notwithstanding the provisions of subsection a. of this
17 section to the contrary, a State agency may implement a regulatory
18 guidance document without specific authorization by State law
19 when the State agency determines that regulatory guidance is
20 necessary in order to clarify or explain a component of a new rule
21 or adopted amendments to an existing rule, provided that the
22 regulatory guidance document is posted] unless the agency makes
23 such documents readily available to the regulated community
24 through appropriate means, including but not limited to posting³ in
25 a prominent place on the website for the agency.

26 ³c. ³ A regulatory guidance document ³[authorized pursuant to
27 this subsection, until such time as it is] that has not been³ adopted
28 as a rule pursuant to P.L.1968, c.410, shall not:

29 (1) impose any new or additional requirements that are not
30 included in the ³State or federal law or³ rule that the regulatory
31 guidance document is intended to clarify or explain; or

32 (2) be used by the State agency ³as a substitute for the State or
33 federal law or rule³ for enforcement purposes.

34 ³[c. Within 30 days after the date of enactment of this act, each
35 State agency shall make public in a prominent place on the website
36 for the agency all regulatory guidance documents used by the
37 agency that are specifically authorized by State law and clearly

EXPLANATION – Matter enclosed in bold-faced brackets [**thus**] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARG committee amendments adopted March 4, 2010.

²Assembly floor amendments adopted March 15, 2010.

³Assembly amendments adopted in accordance with Governor's recommendations January 9, 2012.

1 identify the State law providing the authorization for each
2 regulatory guidance document.¹]³

3 ²d. As used in this section, “regulatory guidance document”
4 means any policy memorandum or other similar document used by a
5 State agency to provide technical or regulatory assistance or
6 direction³ [in the implementation of] to the regulated community to
7 facilitate compliance with³ a State or federal law or a rule adopted
8 pursuant to P.L.1968, c.410³ [where the document itself has not
9 been adopted pursuant to P.L.1968, c.410]³ , but shall not include
10 technical manuals adopted by the Department of Environmental
11 Protection pursuant to section 1 of P.L.1991, c.422 (C.13:1D-111).²

12 ³e. Nothing in this section shall be construed to require the
13 disclosure of any information or record that is protected from
14 disclosure by law, court order or rule of court, or to abrogate or
15 erode any privilege or grant of confidentiality heretofore established
16 or recognized by the Constitution of this State, statute, court rule or
17 judicial case law.³

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19 2. This act shall take effect immediately.

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25 Requires all State agency rules be published in NJ Register, and
26 prohibits use of regulatory guidance documents except under certain
circumstances.