

6869

I N S E N A T E

March 24, 2014

Introduced by Sens. GALLIVAN, MARCHIONE, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the state administrative procedure act, in relation to review of existing rules and rule making procedure

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 1 and subdivisions 2 and 4 of
2 section 207 of the state administrative procedure act, paragraph (a) of
3 subdivision 1 and subdivision 2 as amended by chapter 462 of the laws of
4 2012 and paragraph 4 as added by chapter 262 of the laws of 1996, are
5 amended to read as follows:

6 (a) Unless the contrary is specifically provided by paragraph (b) of
7 this subdivision or by another law, any rule which is adopted on or
8 after the effective date of this section shall be reviewed in the calen-
9 dar year specified in the notice of adoption for the rule, provided that
10 at a minimum every rule shall be initially reviewed no later than in the
11 fifth calendar year after the year in which the rule is adopted, and,
12 thereafter, every rule shall be re-reviewed at five-year intervals. ALL
13 RULES ADOPTED BEFORE THE EFFECTIVE DATE OF THIS SECTION SHALL BE
14 INITIALLY REVIEWED NO LATER THAN IN THE TWO THOUSAND NINETEEN CALENDAR
15 YEAR, AND, THEREAFTER, EVERY RULE SHALL BE RE-REVIEWED AT FIVE-YEAR
16 INTERVALS.

17 2. An agency shall submit for publication in the regulatory agenda
18 published in January pursuant to section two hundred two-d of this arti-
19 cle a list of the rules which must be reviewed pursuant to subdivision
20 one of this section in the ensuing calendar year. In addition to the
21 information required by such section two hundred two-d, for each rule so
22 listed the agency shall provide an analysis of [the need for and legal
23 basis of such rule,]: (A) THE NEED FOR SUCH RULE, (B) THE LEGAL BASIS
24 OF SUCH RULE, (C) WHETHER THE RULE IS DUPLICATIVE OF ANY OTHER RULE OR
25 REGULATION, (D) WHETHER THE RULE REFLECTS OR UTILIZES CURRENT TECHNOLO-
26 GY, AND (E) WHETHER THE RULE REFLECTS CURRENT INDUSTRY PRACTICES AND
27 STANDARDS. THE AGENCY shall invite public comment on the continuation or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD14390-03-4

1 modification of the rule and shall indicate the last date for submission
2 of comments which shall be not less than forty-five days from the date
3 of publication. An agency shall also publish the list of rules that must
4 be reviewed pursuant to this section on its website. If the original
5 notice of proposed rule making for a listed rule required the prepara-
6 tion of a regulatory flexibility analysis, a rural area flexibility
7 analysis, or a job impact statement, the agency shall so indicate and
8 shall provide outreach as appropriate to potentially affected small
9 businesses, local governments and public and private interests in rural
10 areas that the rule is being reviewed. Such outreach may include solici-
11 tation of input through electronic means or through any of the activ-
12 ities listed in subdivision six of section two hundred two-b and subdivi-
13 sion seven of section two hundred two-bb of this article.

14 4. If an agency determines that a rule subject to the provisions of
15 this section should continue without modification, it shall publish a
16 notice to that effect, which shall identify the rule and the statutory
17 authority for the rule, and include a statement setting forth a reasoned
18 justification for continuation of the rule without modification and an
19 assessment of public comments, prepared in accordance with subdivision
20 four-a of section two hundred two of this [chapter] ARTICLE, which were
21 submitted to the agency in response to the listing of the rule in the
22 regulatory agenda, AND A SUMMARY OF THE ANALYSIS REQUIRED UNDER SUBDIVI-
23 SION TWO OF THIS SECTION.

24 S 2. Paragraph (f) of subdivision 1 of section 202 of the state admin-
25 istrative procedure act, as amended by chapter 610 of the laws of 1987,
26 subparagraph (iv) as amended by chapter 703 of the laws of 1991, subpar-
27 agraph (v) as amended by chapter 429 of the laws of 2003, subparagraph
28 (vii) as amended by chapter 171 of the laws of 1994 and subparagraph
29 (viii) as amended by chapter 229 of the laws of 2000, is amended to read
30 as follows:

31 (f) The notice of proposed rule making shall:

32 (i) cite the statutory authority, including particular sections and
33 subdivisions, under which the rule is proposed for adoption;

34 (ii) give the date, time and place of any public hearing or hearings
35 which are scheduled;

36 (iii) state whether or not the place of any public hearing or hearings
37 shall be reasonably accessible to persons with a mobility impairment;
38 for purposes hereof, "persons with a mobility impairment" shall mean
39 those persons with a physical impairment which is permanent and severely
40 limits that person's mobility, or a person who is unable to ambulate
41 without the aid of a wheelchair or other prosthetic device; provided,
42 however, that the failure of such accessibility in accordance herewith,
43 upon diligent effort to have provided same, shall have no effect upon
44 any actions or proceedings taken at any such subject hearings;

45 (iv) include a statement that interpreter services shall be made
46 available to deaf persons, at no charge, upon written request to such
47 agency representative as shall be designated pursuant to subparagraph
48 [(viii)] (IX) of this paragraph within a reasonable time prior to any
49 scheduled public hearing or hearings. If interpreter services are
50 requested, the agency conducting the rule making proceeding in all
51 instances shall appoint a qualified interpreter who is certified by a
52 recognized national or New York state credentialing authority to inter-
53 pret the proceedings to, and the testimony of, such deaf person. Such
54 agency shall determine a reasonable fee for all such interpreting
55 services which shall be a charge upon the agency;

1 (v) contain the complete text of the proposed rule, provided, however,
2 if such text exceeds two thousand words, the notice shall contain only a
3 description of the subject, purpose and substance of such rule in less
4 than two thousand words and shall identify the address of the website,
5 if any, on which the full text has been posted;

6 (vi) INCLUDE THE NEED FOR SUCH RULE, WHETHER THE RULE IS DUPLICATIVE
7 OF ANY OTHER RULE OR REGULATION, WHETHER THE RULE REFLECTS OR UTILIZES
8 CURRENT TECHNOLOGY, AND WHETHER THE RULE REFLECTS CURRENT INDUSTRY PRAC-
9 TICES AND STANDARDS;

10 (VII) include a regulatory impact statement prepared pursuant to
11 section two hundred two-a of this [chapter] ARTICLE, provided, however,
12 if such statement exceeds two thousand words, the notice shall include
13 only a summary of such statement in less than two thousand words;

14 [(vii)] (VIII) include a regulatory flexibility analysis and a rural
15 area flexibility analysis prepared pursuant to sections two hundred
16 two-b and two hundred two-bb of this [chapter] ARTICLE, provided, howev-
17 er, if an analysis exceeds two thousand words, the notice shall include
18 only a summary of such analysis in less than two thousand words;

19 [(viii)] (IX) give the name, public office address and telephone
20 number of an agency representative, who is knowledgeable on the proposed
21 rule, from whom the complete text of such rule and any scientific or
22 statistical study, report and analysis that served as the basis for the
23 rule and any supporting data, the regulatory impact statement, the regu-
24 latory flexibility analysis, and the rural area flexibility analysis may
25 be obtained; from whom information about any public hearing may be
26 obtained; and to whom written data, views and arguments may be submit-
27 ted; and

28 [(ix)] (X) include any additional matter required by statute.

29 S 3. Paragraph (c) of subdivision 5 of section 202 of the state admin-
30 istrative procedure act, as amended by chapter 610 of the laws of 1987,
31 subparagraph (iii) as amended, subparagraph (ix) as added and subpara-
32 graph (x) as renumbered by chapter 850 of the laws of 1990, and subpara-
33 graphs (vi) and (viii) as amended by chapter 171 of the laws of 1994, is
34 amended to read as follows:

35 (c) The notice of adoption shall:

36 (i) cite the statutory authority, including particular sections and
37 subdivisions, under which the rule is adopted;

38 (ii) contain the complete text of the rule as adopted, provided,
39 however, if such text exceeds two thousand words, the notice shall
40 contain only a description of the subject, purpose and substance of such
41 rule in less than two thousand words;

42 (iii) state whether there have been any changes in the text of the
43 rule as adopted when compared with the text of the latest published
44 version of the proposed rule, and if such changes have occurred, cite
45 the particular sections, subdivisions and paragraphs so changed;

46 (iv) give the effective date of the rule;

47 (v) INCLUDE THE NEED FOR SUCH RULE, WHETHER THE RULE IS DUPLICATIVE OF
48 ANY OTHER RULE OR REGULATION, WHETHER THE RULE REFLECTS OR UTILIZES
49 CURRENT TECHNOLOGY, AND WHETHER THE RULE REFLECTS CURRENT INDUSTRY PRAC-
50 TICES AND STANDARDS;

51 (VI) include a revised regulatory impact statement, when required by
52 the provisions of [subparagraph (ii) of] paragraph [(a)] (II) of subdi-
53 vision six of section two hundred two-a of this [chapter] ARTICLE,
54 provided, however, if such statement exceeds two thousand words, the
55 notice shall include only a summary of such statement in less than two
56 thousand words;

1 [(vi)] (VII) include a revised regulatory flexibility analysis and
2 rural area flexibility analysis, when required by the provisions of
3 [subparagraph (ii) of] paragraph [(a)] (II) of subdivision seven of
4 section two hundred two-b and paragraph (b) of subdivision eight of
5 section two hundred two-bb of this [chapter] ARTICLE, provided, however,
6 if such statement exceeds two thousand words, the notice shall include
7 only a summary of such statement in less than two thousand words;
8 [(vii)] (VIII) include the assessment of public comment, prepared
9 pursuant to paragraph (b) of this subdivision, provided, however, if
10 such assessment exceeds two thousand words, the notice shall include
11 only a summary of such assessment in less than two thousand words;
12 [(viii)] (IX) give the name, public office address and telephone
13 number of an agency representative from whom the complete text of the
14 rule and any revised regulatory impact statement, revised regulatory
15 flexibility analysis, rural area flexibility analysis or assessment of
16 comments may be obtained; and
17 [(ix)] (X) state whether any notice of revised rule making had been
18 submitted for such rule making and specify the date or dates that such
19 notice or notices appeared in the state register; and
20 [(x)] (XI) include any additional matter required by statute.
21 S 4. This act shall take effect immediately.