

# STATE OF NEW YORK

3386

2017-2018 Regular Sessions

## IN SENATE

January 23, 2017

Introduced by Sens. GALLIVAN, AVELLA, BONACIC, DeFRANCISCO, FELDER, LARKIN, LAVALLE, MARCHIONE, MURPHY, RANZENHOFER, SEWARD, 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 subdivision 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 twenty-one 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

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

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1 of such rule, (c) whether the rule is duplicative of any other rule or  
2 regulation, (d) whether the rule reflects or utilizes current technolo-  
3 gy, and (e) whether the rule reflects current industry practices and  
4 standards. The agency shall invite public comment on the continuation or  
5 modification of the rule and shall indicate the last date for submission  
6 of comments which shall be not less than forty-five days from the date  
7 of publication. An agency shall also publish the list of rules that must  
8 be reviewed pursuant to this section on its website. If the original  
9 notice of proposed rule making for a listed rule required the prepara-  
10 tion of a regulatory flexibility analysis, a rural area flexibility  
11 analysis, or a job impact statement, the agency shall so indicate and  
12 shall provide outreach as appropriate to potentially affected small  
13 businesses, local governments and public and private interests in rural  
14 areas that the rule is being reviewed. Such outreach may include solici-  
15 tation of input through electronic means or through any of the activi-  
16 ties listed in subdivision six of section two hundred two-b and subdivi-  
17 sion seven of section two hundred two-bb of this article.

18 4. If an agency determines that a rule subject to the provisions of  
19 this section should continue without modification, it shall publish a  
20 notice to that effect, which shall identify the rule and the statutory  
21 authority for the rule, and include a statement setting forth a reasoned  
22 justification for continuation of the rule without modification and an  
23 assessment of public comments, prepared in accordance with subdivision  
24 four-a of section two hundred two of this [~~chapter~~] article, which were  
25 submitted to the agency in response to the listing of the rule in the  
26 regulatory agenda, and a summary of the analysis required under subdivi-  
27 sion two of this section.

28 § 2. Paragraph (f) of subdivision 1 of section 202 of the state admin-  
29 istrative procedure act, as amended by chapter 610 of the laws of 1987,  
30 subparagraph (iv) as amended by chapter 703 of the laws of 1991, subpar-  
31 agraphs (v), (vi) and (vii) as amended by chapter 304 of the laws of  
32 2016, and subparagraph (viii) as amended by chapter 229 of the laws of  
33 2000, is amended to read as follows:

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

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

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

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

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

1 agency shall determine a reasonable fee for all such interpreting  
2 services which shall be a charge upon the agency;

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

8 (vi) include the need for such rule, whether the rule is duplicative  
9 of any other rule or regulation, whether the rule reflects or utilizes  
10 current technology, and whether the rule reflects current industry prac-  
11 tices and standards;

12 (vii) include a regulatory impact statement prepared pursuant to  
13 section two hundred two-a of this article, provided, however, if such  
14 statement exceeds two thousand words, the notice shall include only a  
15 summary of such statement in less than two thousand words and the full  
16 text of such statement shall be posted on a website maintained by the  
17 agency or another state entity until such statement is revised or the  
18 proposed rule is adopted or withdrawn or expires pursuant to this arti-  
19 cle;

20 [~~(vii)~~] (viii) include a regulatory flexibility analysis and a rural  
21 area flexibility analysis prepared pursuant to sections two hundred  
22 two-b and two hundred two-bb of this article, provided, however, if an  
23 analysis exceeds two thousand words, the notice shall include only a  
24 summary of such analysis in less than two thousand words and the full  
25 text of such analysis shall be posted on a website maintained by the  
26 agency or another state entity until such analysis is revised or the  
27 proposed rule is adopted or withdrawn or expires pursuant to this arti-  
28 cle;

29 [~~(viii)~~] (ix) give the name, public office address and telephone  
30 number of an agency representative, who is knowledgeable on the proposed  
31 rule, from whom the complete text of such rule and any scientific or  
32 statistical study, report and analysis that served as the basis for the  
33 rule and any supporting data, the regulatory impact statement, the regu-  
34 latory flexibility analysis, and the rural area flexibility analysis may  
35 be obtained; from whom information about any public hearing may be  
36 obtained; and to whom written data, views and arguments may be submit-  
37 ted; and

38 [~~(ix)~~] (x) include any additional matter required by statute.

39 § 3. Paragraph (c) of subdivision 5 of section 202 of the state admin-  
40 istrative procedure act, as amended by chapter 610 of the laws of 1987,  
41 subparagraph (iii) as amended, subparagraph (ix) as added and subpara-  
42 graph (x) as renumbered by chapter 850 of the laws of 1990, subpara-  
43 graphs (v) and (vi) as amended by chapter 304 of the laws of 2016 and  
44 subparagraph (viii) as amended by chapter 171 of the laws of 1994, is  
45 amended to read as follows:

46 (c) The notice of adoption shall:

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

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

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

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

2 (v) include the need for such rule, whether the rule is duplicative of  
3 any other rule or regulation, whether the rule reflects or utilizes  
4 current technology, and whether the rule reflects current industry prac-  
5 tices and standards;

6 (vi) include a revised regulatory impact statement, when required by  
7 the provisions of paragraph (b) of subdivision six of section two  
8 hundred two-a of this article, provided, however, if such statement  
9 exceeds two thousand words, the notice shall include only a summary of  
10 such statement in less than two thousand words;

11 [~~(vi)~~] (vii) include a revised regulatory flexibility analysis and a  
12 rural area flexibility analysis, when required by the provisions of  
13 paragraph (b) of subdivision seven of section two hundred two-b and  
14 paragraph (b) of subdivision eight of section two hundred two-bb of this  
15 article, provided, however, if such statement exceeds two thousand  
16 words, the notice shall include only a summary of such statement in less  
17 than two thousand words;

18 [~~(vii)~~] (viii) include the assessment of public comment, prepared  
19 pursuant to paragraph (b) of this subdivision, provided, however, if  
20 such assessment exceeds two thousand words, the notice shall include  
21 only a summary of such assessment in less than two thousand words;

22 [~~(viii)~~] (ix) give the name, public office address and telephone  
23 number of an agency representative from whom the complete text of the  
24 rule and any revised regulatory impact statement, revised regulatory  
25 flexibility analysis, rural area flexibility analysis or assessment of  
26 comments may be obtained; [~~and~~

27 [~~(ix)~~] (x) state whether any notice of revised rule making had been  
28 submitted for such rule making and specify the date or dates that such  
29 notice or notices appeared in the state register; and

30 [~~(x)~~] (xi) include any additional matter required by statute.

31 § 4. This act shall take effect immediately.