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:

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

(a) Unless the contrary is specifically provided by paragraph (b) of this subdivision or by another law, any rule which is adopted on or after the effective date of this section shall be reviewed in the calendar year specified in the notice of adoption for the rule, provided that at a minimum every rule shall be initially reviewed no later than in the fifth calendar year after the year in which the rule is adopted, and, thereafter, every rule shall be re-reviewed at five-year intervals. **All rules adopted before the effective date of this section shall be initially reviewed no later than in the two thousand twenty-one calendar year, and, thereafter, every rule shall be re-reviewed at five-year intervals.**

2. An agency shall submit for publication in the regulatory agenda published in January pursuant to section two hundred two-d of this article a list of the rules which must be reviewed pursuant to subdivision one of this section in the ensuing calendar year. In addition to the information required by such section two hundred two-d, for each rule so listed the agency shall provide an analysis of [~~the need for and legal 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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of such rule, (c) whether the rule is duplicative of any other rule or regulation, (d) whether the rule reflects or utilizes current technology, and (e) whether the rule reflects current industry practices and standards. The agency shall invite public comment on the continuation or modification of the rule and shall indicate the last date for submission of comments which shall be not less than forty-five days from the date of publication. An agency shall also publish the list of rules that must be reviewed pursuant to this section on its website. If the original notice of proposed rule making for a listed rule required the preparation of a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement, the agency shall so indicate and shall provide outreach as appropriate to potentially affected small businesses, local governments and public and private interests in rural areas that the rule is being reviewed. Such outreach may include solicitation of input through electronic means or through any of the activities listed in subdivision six of section two hundred two-b and subdivision seven of section two hundred two-bb of this article.

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

§ 2. Paragraph (f) of subdivision 1 of section 202 of the state administrative procedure act, as amended by chapter 610 of the laws of 1987, subparagraph (iv) as amended by chapter 703 of the laws of 1991, subparagraphs (v), (vi) and (vii) as amended by chapter 304 of the laws of 2016, and subparagraph (viii) as amended by chapter 229 of the laws of 2000, is amended to read as follows:

(f) The notice of proposed rule making shall:

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

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

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

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

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

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

(vi) **include the need for such rule, whether the rule is duplicative of any other rule or regulation, whether the rule reflects or utilizes current technology, and whether the rule reflects current industry practices and standards;**

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

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

[~~(viii)~~] **(ix)** give the name, public office address and telephone number of an agency representative, who is knowledgeable on the proposed rule, from whom the complete text of such rule and any scientific or statistical study, report and analysis that served as the basis for the rule and any supporting data, the regulatory impact statement, the regulatory flexibility analysis, and the rural area flexibility analysis may be obtained; from whom information about any public hearing may be obtained; and to whom written data, views and arguments may be submitted; and

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

§ 3. Paragraph (c) of subdivision 5 of section 202 of the state administrative procedure act, as amended by chapter 610 of the laws of 1987, subparagraph (iii) as amended, subparagraph (ix) as added and subparagraph (x) as renumbered by chapter 850 of the laws of 1990, subparagraphs (v) and (vi) as amended by chapter 304 of the laws of 2016 and subparagraph (viii) as amended by chapter 171 of the laws of 1994, is amended to read as follows:

(c) The notice of adoption shall:

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

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

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

(iv) give the effective date of the rule;

(v) **include the need for such rule, whether the rule is duplicative of any other rule or regulation, whether the rule reflects or utilizes current technology, and whether the rule reflects current industry practices and standards;**

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

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

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

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

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

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

§ 4. This act shall take effect immediately.