

CHAPTER 167

AN ACT in relation to rule making and adjudication by state administrative agencies, constituting chapter eighty-two of the consolidated laws and amending the executive law, in relation to the state bulletin

Became a law June 3, 1975, with the approval of the Governor. Passed by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. A state administrative procedure act is hereby enacted, to read as follows:

CHAPTER EIGHTY-TWO OF THE CONSOLIDATED LAWS

STATE ADMINISTRATIVE PROCEDURE ACT

- Article 1. General Provisions. (§§ 100-104)
2. Rule making. (§§ 201-207)
 3. Adjudicatory proceedings. (§§ 301-308)
 4. Licenses. (§§ 401-402)
 5. Representation. (§ 501)

ARTICLE I

GENERAL PROVISIONS

- Section 100. Legislative intent.
101. Short title.
 102. Definitions.
 - 102-a. Small business regulation guides.
 - 102-b. Small business liaison.
 103. Construction; severability.
 104. Access to studies and data.

§ 100. Legislative intent. The legislature hereby finds and declares that the administrative rulemaking, adjudicatory and licensing processes among the agencies of state government are inconsistent, lack uniformity and create misunderstanding by the public. In order to provide the people with simple, uniform administrative procedures, an administrative procedure act is hereby enacted. This act guarantees that the actions of

administrative agencies conform with sound standards developed in this state and nation since their founding through constitutional, statutory and case law. It insures that equitable practices will be provided to meet the public interest.

It is further found that in the public interest it is desirable for state agencies to meet the requirements imposed by the administrative procedure act. Those agencies which will not have to conform to this act have been exempted from the act, either specifically by name or impliedly by definition.

§ 101. Short title. This chapter shall be known and may be cited as the "State Administrative Procedure Act."

§ 102. Definitions. As used in this chapter,

* 1. "Agency" means any department, board, bureau, commission, division, office, council, committee or officer of the state, or a public benefit corporation or public authority at least one of whose members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the governor, agencies in the legislative and judicial branches, agencies created by interstate compact or international agreement, the division of military and naval affairs to the extent it exercises its responsibility for military and naval affairs, the division of state police, the identification and intelligence unit of the division of criminal justice services, the state insurance fund, the unemployment insurance appeal board, and except for purposes of subdivision one of section two hundred two-d and section two hundred two-f of this chapter, the workers' compensation board and except for purposes of article two of this chapter, the department of corrections and community supervision.

* NB Effective until January 1, 2027

* 1. "Agency" means any department, board, bureau, commission, division, office, council, committee or officer of the state, or a public benefit corporation or public authority at least one of whose

members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the governor, agencies in the legislative and judicial branches, agencies created by interstate compact or international agreement, the division of military and naval affairs to the extent it exercises its responsibility for military and naval affairs, the division of state police, the identification and intelligence unit of the division of criminal justice services, the state insurance fund, the unemployment insurance appeal board, and except for purposes of subdivision one of section two hundred two-d of this chapter, the workers' compensation board and except for purposes of article two of this chapter, the department of corrections and community supervision.

* NB Effective January 1, 2027

2. (a) "Rule" means (i) the whole or part of each agency statement, regulation or code of general applicability that implements or applies law, or prescribes a fee charged by or paid to any agency or the procedure or practice requirements of any agency, including the amendment, suspension or repeal thereof and (ii) the amendment, suspension, repeal, approval, or prescription for the future of rates, wages, security authorizations, corporate or financial structures or reorganization thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs or accounting, or practices bearing on any of the foregoing whether of general or particular applicability.

(b) Not included within paragraph (a) of this subdivision are:

(i) rules concerning the internal management of the agency which do not directly and significantly affect the rights of or procedures or practices available to the public;

(ii) rules relating to the use of public works, including streets and highways, when the substance of such rules is indicated to the public by means of signs or signals;

(iii) rulings issued under section two hundred four or two hundred five of this chapter;

(iv) forms and instructions, interpretive statements and statements of general policy which in themselves have no legal effect but are merely explanatory;

(v) rules promulgated to implement agreements pursuant to article fourteen of the civil service law;

(vi) rates of interest prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law;

(vii) rules relating to the approval or disapproval of subscriber rates contained in an application to the public service commission, after public hearing and approval by the applicable municipality for a certificate of confirmation or an amendment to a franchise agreement;

(viii) appraisal models, discount rates, state equalization rates, class ratios, special equalization rates and special equalization ratios established pursuant to the real property tax law;

(ix) rates subject to prior approval by the superintendent of financial services or to section two thousand three hundred forty-four of the insurance law;

(x) any regulation promulgating an interim price and any final marketing order made by the commissioner of agriculture and markets pursuant to section two hundred fifty-eight-m of the agriculture and markets law;

(xi) any fee which is:

(1) set by statute;

(2) less than one hundred dollars;

(3) one hundred dollars or more and can reasonably be expected to result in an annual aggregate collection of not more than one thousand dollars;

(4) established through negotiation, written agreement or competitive bidding, including, but not limited to, contracts, leases, charges, permits for space use, prices, royalties or commissions; or

(5) a charge or assessment levied by an agency upon another agency or by an agency upon another unit of state government.

(xii) changes in a schedule filed by a telephone corporation subject to the jurisdiction of the public service commission;

(xiii) rules relating to requests for authority by a telephone corporation subject to the jurisdiction of the public service commission under sections ninety-nine, one hundred and one hundred one of the public service law and by a public utility subject to the jurisdiction of the public service commission under section one hundred seven of the public service law;

(xiv) any regulation comprised solely of one or more additions to the list of nonprescription drugs reimbursable under the medicaid program pursuant to paragraph (a) of subdivision four of section three hundred sixty-five-a of the social services law.

3. "Adjudicatory proceeding" means any activity which is not a rule making proceeding or an employee disciplinary action before an agency, except an administrative tribunal created by statute to hear or determine allegations of traffic infractions which may also be heard in a court of appropriate jurisdiction, in which a determination of the legal rights, duties or privileges of named parties thereto is required by law to be made only on a record and after an opportunity for a hearing.

4. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

5. "Licensing" includes any agency activity respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, recall, cancellation or amendment of a license.

6. "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency engaged in the particular rule making, declaratory ruling, or adjudication.

7. "Party" means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

8. "Small business" means any business which is resident in this state, independently owned and operated, and employs one hundred or less individuals.

9. "Substantial revision" means any addition, deletion or other change

in the text of a rule proposed for adoption, which materially alters its purpose, meaning or effect, but shall not include any change which merely defines or clarifies such text and does not materially alter its purpose, meaning or effect. To determine if the revised text of a proposed rule contains a substantial revision, the revised text shall be compared to the text of the rule for which a notice of proposed rule making was published in the state register; provided, however, if a notice of revised rule making was previously published in the state register, the revised text shall be compared to the revised text for which the most recent notice of revised rule making was published.

10. "Rural area" means those portions of the state so defined by subdivision seven of section four hundred eighty-one of the executive law.

11. "Consensus rule" means a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely (a) repeals regulatory provisions which are no longer applicable to any person, (b) implements or conforms to non-discretionary statutory provisions, or (c) makes technical changes or is otherwise non-controversial.

13. "Data" means written information or material, including, but not limited to, statistics or measurements used as the basis for reasoning, calculations or conclusions in a study.

14. "Guidance document" means any guideline, memorandum or similar document prepared by an agency that provides general information or guidance to assist regulated parties in complying with any statute, rule or other legal requirement, but shall not include documents that concern only the internal management of the agency or declaratory rulings issued pursuant to section two hundred four of this chapter.

§ 102-a. Small business regulation guides. 1. For each rule or group of related rules which significantly impact a substantial number of small businesses, the agency which adopted the rule shall post on its

website one or more guides explaining the actions a small business may take to comply with such rule or group of rules if the agency determines that such guide or guides will assist small businesses in complying with the rule, and shall designate each such posting as a "small business regulation guide". The guide shall explain the actions a small business may take to comply with a rule or group of rules, identify any sources of information or assistance available to facilitate small business regulatory compliance, and, where appropriate, include information on (a) the most common regulatory violations that small businesses are cited for by the agency, (b) statistical information on the frequency of violations of various regulations by small businesses and (c) any actions that small businesses can reasonably undertake to minimize or prevent the occurrence of such violations, including any relevant information and analysis.

2. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language that it is likely to be understood by affected small businesses. Agencies shall cooperate with other state agencies in developing such guides.

§ 102-b. Small business liaison. The departments of agriculture and markets, environmental conservation, labor, transportation, and taxation and finance shall designate an existing employee to serve as the liaison to small businesses regulated by such agency. The direct contact information of the small business liaison shall be prominently posted and easily accessible on the agency website. The small business liaison shall:

(a) serve as an initial primary contact for small businesses to contact with any inquiries;

(b) be equipped to provide small businesses with basic information on the agency and its regulations;

(c) help small businesses navigate the agency bureaucracy to identify and contact the appropriate staff person within the agency, either at the state or regional level, for more specific information pertaining to the small business;

- (d) hear the concerns of small businesses, report those concerns to appropriate agency staff and offer possible solutions to such concerns;
- (e) advocate within the agency on behalf of small businesses, and make recommendations to the agency head on matters affecting small businesses;
- (f) initiate and encourage small business education and outreach programs on behalf of the agency, as appropriate;
- (g) collaborate with the appropriate agency staff on any small business regulation guide pursuant to section one hundred two-a and any small business regulatory flexibility analysis pursuant to section two hundred two-b of this chapter; and
- (h) coordinate his or her activities with the division for small business within the department of economic development, and the small business development center.

§ 103. Construction; severability. 1. (a) Except with respect to the provisions of paragraph (c) of this subdivision, or of paragraph (b) of subdivision one and subdivision six of section two hundred two of this chapter, the provisions of this chapter shall not be construed to limit or repeal additional requirements imposed by statute or otherwise.

(b) The provisions of section two hundred two of this chapter shall not relieve any agency from compliance with any statute requiring that its rules be filed with or approved by designated persons or bodies before such rules become effective.

(c) Notwithstanding the requirements of any statute, when adopting a consensus rule as defined in this chapter, an agency may in its discretion dispense with any statutory requirement for public hearing or publication of a notice in any newspaper or publication other than the state register, unless such requirement is explicitly directed at the rule which is being adopted.

2. The provisions of this chapter shall not be deemed to repeal section six hundred fifty-nine of the labor law.

3. The provisions of this chapter shall apply only to rule making, adjudicatory and licensing proceedings commencing on or after the

effective date of this chapter.

4. If any provision of this chapter or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the chapter or the application thereof to other persons and circumstances.

§ 104. Access to studies and data. 1. An agency, upon request, shall, within thirty days, make available for inspection and copying any scientific or statistical study, report or analysis, including any such study, report or analysis prepared by a person or entity pursuant to a contract with the agency or funded in whole or in part through a grant from the agency that is used as the basis of a proposed rule and any supporting data; provided, however, that the agency shall provide for inspection only of any such study, report or analysis due to copyright restrictions.

2. An agency that contracts with a person or entity for the performance of a study or awards a grant for such purpose shall require as a condition or term of such contract or grant that the person or entity shall provide to the agency the study, any data supporting the study, and identity of the principal person or persons who performed such study for disclosure in accordance with the provisions of this section and of article six of the public officers law.

ARTICLE 2

RULE MAKING

- Section 201. Adoption of procedures; plain language.
- 201-a. Job impact.
 - 202. Rule making procedure.
 - 202-a. Regulatory impact.
 - 202-b. Regulatory flexibility for small businesses.
 - 202-bb. Rural area flexibility analysis.
 - 202-d. Regulatory agenda

- 202-e. Guidance documents; availability to public.
- 202-f. Public hearings.
- 203. Filing; effective date.
- 204. Declaratory rulings by agencies.
- 204-a. Alternate methods for implementing regulatory mandates.
- 205. Right to judicial review of rules.
- 206. Overlapping regulations; compliance determinations.
- 207. Review of existing rules.

§ 201. Adoption of procedures; plain language. This article establishes minimum procedures for all agencies, provided, however, an agency may adopt by rule additional procedures not inconsistent with statute. Each agency shall strive to ensure that, to the maximum extent practical, its rules, regulations and related documents are written in a clear and coherent manner, using words with common and everyday meanings.

§ 201-a. Job impact. 1. In developing a rule, an agency shall strive to accomplish the objectives of applicable statutes in a manner which minimizes any unnecessary adverse impacts on existing jobs and promotes the development of new employment opportunities, including opportunities for self-employment, for the residents of the state.

2. Before proposing a rule for adoption or adopting a rule on an emergency basis, an agency shall evaluate the potential impact of the rule on jobs and employment opportunities.

(a) When it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency shall include in the notice of proposed rule making or the notice of emergency adoption a statement that the agency has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities; provided, however, that, where appropriate, such statement shall indicate that the agency has determined the rule will have a positive impact on jobs and employment opportunities, or will have no impact on jobs and employment

opportunities. Except where it is evident from the subject matter of the rule that the rule could only have a positive impact or no impact on jobs and employment opportunities, the agency shall include in the statement prepared pursuant to this paragraph a summary of the information and methodology underlying its determination.

(b) When it is apparent from the nature and purpose of the rule that it may have a substantial adverse impact on jobs or employment opportunities, the agency shall issue a job impact statement which contains information on:

(i) the nature of the impact the rule will have on jobs and employment opportunities;

(ii) the categories of jobs or employment opportunities affected by the rule;

(iii) the approximate number of jobs or employment opportunities affected in each category;

(iv) any region of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities; and

(v) any measures which the agency has taken to minimize any unnecessary adverse impacts on existing jobs and to promote the development of new employment opportunities.

(c) When the information available to an agency is insufficient to enable it to determine whether a rule will have a substantial adverse impact on jobs or employment opportunities, or to prepare a job impact statement pursuant to paragraph (b) of this subdivision, the agency shall issue a statement indicating the information which it needs to complete a job impact statement and requesting the assistance of other state agencies and the public in obtaining such information.

(d) An agency shall issue a revised job impact statement when:

(i) the information presented in the statement is inadequate or incomplete;

(ii) the proposed rule contains any substantial revisions which necessitate that such statement be modified; or

(iii) the agency has issued a statement pursuant to paragraph (c) of this subdivision, and has received information from other state agencies or the public which enable it to provide a more complete evaluation of the potential impact of the rule on jobs and employment opportunities.

(e) If, after requesting the assistance of other state agencies and

the public pursuant to paragraph (c) of this subdivision, an agency is still unable to determine whether the rule will have a substantial adverse impact on jobs and employment opportunities, it may adopt the rule. When adopting a rule pursuant to this paragraph, the agency shall issue a revised job impact statement which includes information on the measures the agency took to evaluate the potential impact of the rule on jobs and employment opportunities.

(f) When adopting a rule on an emergency basis, an agency may defer the issuance of any statement pursuant to this section, provided that the statement is published in the state register within thirty days of the effective date of the emergency rule.

(g) When any statement issued pursuant to this section exceeds two thousand words, the agency shall prepare a summary of such statement in less than two thousand words for publication in the state register in which it shall identify the website of the agency, or of another state entity, on which the full text of the statement has been posted.

(h) An agency may consider a series of closely related and simultaneously proposed rules as one rule for the purpose of submitting a consolidated job impact statement.

(i) Where a rule would have a measurable impact on opportunities for self-employment, the agency shall include a discussion of such impact in any statement prepared pursuant to this section.

3. (a) The commissioner of labor and the commissioner of economic development may review any statement issued pursuant to this section, and may consult informally with any agency preparing such a statement and advise it on the potential impact of a rule on jobs and employment opportunities.

(b) When the commissioner of labor and the commissioner of economic development concur in a determination that additional evaluation of the potential impact of a proposed rule on jobs and employment opportunities is needed to assist in the minimization of any unnecessary adverse impacts of the rule on jobs or employment opportunities, they shall issue a statement of concurrence and transmit a copy of such statement to the agency and to the secretary of state for publication in the state register. The statement of concurrence shall:

(i) identify each proposed rule which is the subject of the statement

of concurrence;

(ii) set forth the basis for the determination that additional evaluation of the potential impact of the rule is needed to assist in the minimization of any unnecessary adverse impacts on jobs or employment opportunities, and, where relevant, identify each aspect of the job impact statement which is incomplete or deficient;

(iii) include appropriate recommendations for additional evaluation of the impact of the rule or of any measures which the agency should consider to minimize any adverse impacts of the rule on jobs or employment opportunities; and

(iv) specify a time period of not more than ninety days for the agency to perform such additional evaluation or consider such recommendations.

(c) An agency shall strive to perform such additional evaluation or consider such measures as are recommended in a statement of concurrence within the time period set forth therein. No agency shall adopt the rule which is the subject of the statement of concurrence until:

(i) the agency has performed the additional evaluation or considered the measures recommended in the statement of concurrence, and has issued a revised job impact statement, which is acceptable to the commissioners of economic development and labor, setting forth any changes which it will make to the rule to minimize any adverse impacts on jobs or employment opportunities; or

(ii) after the expiration of the time period set forth in the statement of concurrence.

(d) The statement of concurrence shall be considered public comment for the purpose of this article and shall be summarized and analyzed in any assessment of public comment.

4. Nothing in this section shall be construed as preventing an agency from adopting a rule on an emergency basis at any time.

5. Copies of any statement prepared pursuant to this section, including any statement of concurrence, shall be distributed as provided in subdivision six-a of section two hundred two of this article.

6. For the purposes of this section:

(a) "rule" shall mean any rule proposed or any rule adopted on an

emergency basis pursuant to this article, except for:

(i) any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this article;

(ii) any rule defined in subdivisions ten, eleven or twelve of section one hundred two of this article; or

(iii) any rule proposed or adopted by the state comptroller or the attorney general.

(b) "impact on jobs or employment opportunities" shall mean a change in the number of jobs and employment opportunities, including opportunities for self-employment, primarily attributable to the adoption of a rule, which would otherwise be available to the residents of the state in the two-year period commencing on the date the rule takes effect.

(c) "substantial adverse impact on jobs or employment opportunities" shall mean a decrease of more than one hundred full-time annual jobs and employment opportunities, including opportunities for self-employment, in the state, or the equivalent in part-time or seasonal employment, which would otherwise be available to the residents of the state in the two-year period commencing on the date the rule takes effect.

§ 202. Rule making procedure. 1. Notice of proposed rule making. (a) Prior to the adoption of a rule, an agency shall submit a notice of proposed rule making to the secretary of state for publication in the state register and shall afford the public an opportunity to submit comments on the proposed rule. Unless a different time is specified by statute, the notice of proposed rule making must appear in the state register at least sixty days prior to either

(i) the addition, amendment or repeal of a rule for which statute does not require that a public hearing be held prior to adoption, or

(ii) the first public hearing on a proposed rule for which such hearing is so required.

The notice of proposed rule making shall indicate the last date for submission of comments on the proposed rule, which, unless a different time is specified in statute or this paragraph, shall be not less than sixty days after the date of publication of such notice, or, if statute

requires that a public hearing be held prior to adoption, not less than five days after the date of the last public hearing scheduled to be held on the proposed rule. Notwithstanding any other provision of this paragraph, when the notice of proposed rule making contains only a description of the subject, purpose and substance of the rule as provided in subparagraph (v) of paragraph (f) of this subdivision, the full text of the proposed rule shall be posted on a website maintained by the agency or another state entity and shall remain posted until such proposed rule is adopted, revised, withdrawn or expires pursuant to this article, except that such web posting shall not be required for any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter.

(b) (i) When an agency submits a notice of proposed rule making as provided in paragraph (a) of this subdivision solely for the purpose of proposing a consensus rule for adoption, the agency may dispense with any requirement for public hearing and the requirements of subparagraphs (ii), (iii), (iv), (vi) and (vii) of paragraph (f) of this subdivision; provided, however, that such notice shall include a statement setting forth a clear and concise explanation of the basis for the agency's determination that no person is likely to object to the adoption of the rule as written.

(ii) If any public comment is received on the rule which contains any objection to adoption of a consensus rule, the agency must withdraw the notice of proposed rule making for the consensus rule and may submit a notice of proposed rule making for such rule making which complies with all of the relevant provisions of this subdivision.

(iii) Unless otherwise provided by law, a rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter may be adopted as a consensus rule in accordance with the provisions of this paragraph; provided, however, that for the purposes of paragraph (c) of subdivision one of section one hundred three of this chapter, any public hearing required by law to be held on any such rule shall be deemed to be explicitly directed at such rule. No such rule which is defined by the public service law as a "major change" may be adopted as a consensus rule.

(c) When appropriate in the judgment of the agency, a notice may also be published in newspapers of general circulation and in trade, industry

or professional publications as the agency may select, and may be posted on the agency's internet website, and may be transmitted to newspapers and trade, industry or professional publications by electronic means in accordance with article three of the state technology law.

(d) The requirement for publication of a notice of proposed rule making in the state register shall not preclude the initiation of a public hearing with respect to the proposal of any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter where notice otherwise consistent with the provisions of this subdivision has been given, provided, however, in all situations notice must be published within a reasonable time prior to the hearing.

(e) When an agency submits a notice of proposed rule making for a rule which was proposed for adoption as a consensus rule and subsequently withdrawn pursuant to paragraph (b) of this subdivision, such notice shall identify the prior notice of proposed rule making and shall briefly describe the objection or objections which caused the prior notice of proposed rule making to be withdrawn.

(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) 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 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) 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) 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) include any additional matter required by statute.

2. Expiration of notice of proposed rule making; notice of expiration.

(a) Except with respect to any notice of proposed rule making concerning a rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter, a notice of proposed rule making shall expire and be ineffective for the purposes of this section, unless the proposed rule is adopted by the agency and filed with the secretary of state in the manner prescribed by law, within three hundred sixty-five days after the latter of:

(i) the publication in the state register of a notice of proposed rule making for the rule; or

(ii) the date of the last public hearing announced in a notice of proposed rule making for the rule.

(b) When a notice so expires, the secretary of state shall publish a notice of expiration in the state register. Such notice shall contain such information as is determined, in the discretion of the secretary of state, to serve the public interest.

3. Continuation of notice of proposed rule making. If, within ninety days of the date on which a rule will expire, an agency submits a notice of revised rule making for the rule, the rule making will be continued for an additional ninety days beyond the date on which it would have expired.

4. Withdrawal of notice of proposed rule making; notice of withdrawal. An agency may withdraw a notice of proposed rule making and terminate a rule making proceeding by submitting a notice of withdrawal to the secretary of state for publication in the state register. Such notice shall include a statement of the reason or reasons for withdrawal of the proposed rule.

4-a. Notice of revised rule making. (a) Except with respect to any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter, prior to the adoption of a rule, an agency shall submit a notice of revised rule making to the secretary of state for publication in the state register for any proposed rule which contains a substantial revision. The public shall be

afforded an opportunity to submit comments on the revised text of a proposed rule. Unless a different time is specified in statute, the notice of revised rule making must appear in the state register at least forty-five days prior to the adoption of the rule. The notice of revised rule making shall indicate the last date for submission of comments on the revised text of the proposed rule, which, unless a different time is specified in statute, shall be not less than forty-five days after the date of publication of such notice.

(b) Each agency shall publish and make available to the public an assessment of public comment for a rule revised pursuant to this subdivision. Such assessment shall be based upon any written comments submitted to the agency and any comments presented at any public hearing held on the proposed rule by the agency. The assessment shall contain: (i) a summary and an analysis of the issues raised and significant alternatives suggested by any such comments; (ii) a statement of the reasons why any significant alternatives were not incorporated into the rule; and (iii) a description of any changes made in the rule as a result of such comments. If no comments have been received, the notice of revised rule making shall state that no comments were received by the agency. Any subsequent assessment published pursuant to this paragraph or paragraph (b) of subdivision five of this section need only include comments not addressed in any previously published assessment of public comment for the rule; provided, however, that the notice of revised rule making or adoption shall contain the date any previous notice of revised rule making containing an assessment of public comment was published in the state register.

(c) The notice of revised rule making shall:

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

(ii) contain the complete revised text of the proposed rule, provided, however, if such text exceeds two thousand words, the notice may contain only a description of the subject, purpose and substance of such rule in less than two thousand words and shall identify the website of the agency, or of another state entity, on which the complete revised text has been posted;

(iii) identify the substantial revisions to the text of the rule;

(iv) give the date, time and place of any public hearing or hearings

on the rule which are to be held subsequent to the publication of the notice;

(v) 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 and shall identify the website of the agency, or of another state entity, on which the complete revised text has been posted;

(vi) 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 analysis exceeds two thousand words, the notice shall include only a summary of such analysis in less than two thousand words and shall identify the website of the agency, or of another state entity, on which the full text of the revised analysis has been posted;

(vii) give the name, address and telephone number of an agency representative knowledgeable on the rule, from whom the complete revised text of such rule, any revised regulatory impact statement any revised regulatory flexibility analysis and any revised rural area flexibility analysis may be obtained; from whom information about any additional public hearing may be obtained; and to whom written data, views and arguments may be submitted;

(viii) state whether the notice shall also extend the rule making period for an additional ninety days as provided in subdivision three of this section;

(ix) include the assessment of public comment, prepared pursuant to paragraph (b) of this subdivision provided, however, that, if such assessment exceeds two thousand words, the notice shall include only a summary of such assessment in less than two thousand words; and

(x) include any additional matter required by statute.

(d) An agency may not submit a notice of revised rule making for a rule which has been proposed as a consensus rule.

5. Notice of adoption. (a) When an agency files a rule with the

secretary of state, such agency shall also submit a notice of adoption to the secretary of state for publication in the state register. Except as provided in subdivision six of this section, an agency may not file a rule with, or submit a notice of adoption to, the secretary of state unless the agency has previously submitted a notice of proposed rule making and complied with the provisions of this section.

(b) Except with respect to any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter, each agency shall publish and make available to the public an assessment of public comment for a rule adopted pursuant to this subdivision or paragraph (e) of subdivision six of this section. Such assessment shall be based upon any written comments submitted to the agency and any comments presented at any public hearing held on the proposed rule by the agency. The assessment shall contain: (i) a summary and an analysis of the issues raised and significant alternatives suggested by any such comments, (ii) a statement of the reasons why any significant alternatives were not incorporated into the rule and (iii) a description of any changes made in the rule as a result of such comments. If any comments included estimates of projected costs of the proposed rule to the state, local governments or regulated persons, which differed significantly from those presented by the agency in its regulatory impact statement, regulatory flexibility analysis, or rural area flexibility analysis, the assessment shall also summarize the agency's assessment of such estimates. If no comments have been received, the notice of adoption shall state that no comments were received by the agency. Comments submitted or presented to the agency by a legislative committee or commission or by a member or members of the senate or assembly shall be considered public comment and shall be summarized and analyzed in the assessment.

(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 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) 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) 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) 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) 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) include any additional matter required by statute.

6. Notice of emergency adoption. (a) Notwithstanding any other provision of law, if an agency finds that the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare and that compliance with the requirements of subdivision one of this section would be contrary to the public interest, the agency may dispense with all or part of such requirements and adopt the rule on an emergency basis.

(b) Unless otherwise provided by law, such emergency rule shall not remain in effect for longer than ninety days after being filed with the secretary of state unless within such time the agency complies with the requirements of subdivision one of this section and adopts the rule pursuant to the provisions of subdivision five of this section, provided, however, if such emergency rule is readopted prior to the expiration of such ninety day period such readoption and any subsequent readoptions shall remain in effect for no longer than sixty days.

(c) An emergency rule which is in regard to security authorizations, corporate or financial structures or reorganization thereof, and for which statute does not require that a public hearing be held prior to adoption, shall not expire pursuant to the provisions of paragraph (b) of this subdivision if the agency finds that the purpose of the rule would be frustrated if subsequent notice procedures were required.

(d) A notice of emergency adoption shall:

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

(ii) state whether the notice shall also constitute a notice of proposed rule making for the purposes of subdivision one of this section, and if so, give the date, time and place of any public hearing or hearings which are scheduled;

(iii) state whether the notice shall also constitute a notice of revised rule making for the purposes of subdivision four-a of this section, and if so, include all information required by such subdivision; and

(iv) contain the findings required by paragraphs (a) and (c) of this subdivision and include a statement fully describing the specific reasons for such findings and the facts and circumstances on which such findings are based. Such statement shall include, at a minimum, a description of the nature and, if applicable, location of the public health, safety or general welfare need requiring adoption of the rule on an emergency basis; a description of the cause, consequences, and expected duration of such need; an explanation of why compliance with the requirements of subdivision one of this section would be contrary to the public interest; and an explanation of why the current circumstance necessitates that the public and interested parties be given less than the minimum period for notice and comment provided for in subdivision

one of this section;

(v) give the effective date of the rule;

(vi) state the specific date the emergency rule will expire;

(vii) 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 and shall identify the address of the website, if any, on which the full text has been posted;

(viii) include a regulatory impact statement prepared pursuant to section two hundred two-a of this chapter or a statement setting forth that the regulatory impact statement will appear in the state register within thirty days of the effective date of the emergency rule, provided, however, if either statement exceeds two thousand words, the notice shall include only a summary of such statement in less than two thousand words;

(ix) include a regulatory flexibility analysis prepared pursuant to section two hundred two-b and a rural area flexibility analysis pursuant to section two hundred two-bb of this chapter or a statement that the regulatory flexibility analysis and/or rural area flexibility analysis will appear in the state register within thirty days of the effective date of the emergency rule, provided, however, if such analysis or statement exceeds two thousand words, the notice shall include only a summary of such analysis or statement in less than two thousand words;

(x) give the name, public office address and telephone number of an agency representative, knowledgeable on the rule, from whom a complete text of such rule, the regulatory impact statement, 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

(xi) include any additional matter required by statute.

(e) If, prior to the expiration of a rule adopted pursuant to paragraph (a) of this subdivision, the agency finds that the readoption of such rule on an emergency basis is necessary for the preservation of the public health, safety or general welfare, the agency may readopt the rule on an emergency basis. No readoption shall be filed with the secretary of state unless the agency has submitted a notice of proposed

rule making pursuant to subdivision one of this section. No second or subsequent readoption shall be filed with the secretary of state unless the agency at the same time submits an assessment of public comments prepared pursuant to paragraph (b) of subdivision five of this section.

(f) When the notice of emergency adoption contains only a description of the subject, purpose and substance of the rule as provided in subparagraph (vii) of paragraph (d) of this subdivision, the full text of the rule shall be posted on a website maintained by the agency or another state entity as soon as practicable, but not later than the date the notice of emergency adoption is published in the state register.

6-a. Distribution of rule making information. (a) An agency shall transmit a copy of any rule making notice prepared pursuant to this article to the governor, the temporary president of the senate, the speaker of the assembly and the administrative regulations review commission at the time such notice is submitted to the secretary of state for publication in the state register. Such transmittal shall include the complete rule text, regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis, or revisions thereof, and any other information submitted to the secretary of state pursuant to this article. Furthermore, such transmittal may be completed by electronic means in accordance with article three of the state technology law.

(b) An agency shall make a copy of the complete text of any proposed, adopted or emergency rule, regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis, or revisions thereof available, in written or electronic forms, to the public at the time such documents are submitted to the secretary of state for publication in the state register and shall send to any person a copy of such text upon written or electronic request.

(c) An agency shall notify every person who has submitted a written or electronic request to be notified of all proposed, revised, emergency and/or adopted rules which may affect such person. The agency may allow requests for only the rules of particular divisions or programs within the agency that are of interest to such person. Written requests shall expire annually on the thirty-first day of December with renewals for the succeeding year to be accepted on or after December first.

Electronic requests shall not expire, but shall continue until the person submits a request to discontinue such notification. Notices issued pursuant to such requests shall be sent to the last address or electronic mail address specified by the person. An agency may charge any person requesting such notice a fee consisting of the cost of preparation, handling and postage; provided, however, that no fee shall be charged for electronic notices. As an alternative to sending a document electronically, an agency may identify the document and provide a link to the section of its website containing the full text of such document.

7. Rule text requirements. (a) Except with respect to any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter, the complete text of any proposed or adopted rule shall identify new language by underscoring or italics, enclose in brackets any words which are to be deleted, and give the citation of any rule which is to be repealed.

(b) Notwithstanding any provision herein to the contrary, an agency may:

(i) with regard to a notice published in the state register concerning a rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter, elect to include either the complete text of the proposed or adopted rule in two thousand words or less, or a description of the subject, purpose and substance of such rule in less than two thousand words; and

(ii) with regard to a notice published in any newspaper or publication other than the state register, elect to include either the complete text or a description of the subject, purpose and substance of the proposed or adopted rule.

(c) For the purposes of determining if the length of the text of a rule to be published pursuant to this section exceeds two thousand words, such text shall exclude any previously published portion of the rule which is precisely identified in the text thereof pursuant to paragraph c of subdivision one of section one hundred two of the executive law;

(d) When a notice published pursuant to this section refers to any rule, text or other information that has been posted on a website

maintained by a state entity in lieu of publication:

(i) the text or information shall be posted not later than the date the notice is published in the state register, and to the extent practicable shall be maintained on such website during the entire period for which such notice is effective; and

(ii) the notice shall provide sufficient information to enable the public to access such information without extensive searching, and shall conform to any guidance prescribed by the secretary of state pursuant to subdivision nine of this section.

8. Judicial review. A proceeding may be commenced to contest a rule on the grounds of noncompliance with the procedural requirements of this section, section two hundred two-a and section two hundred two-b of this chapter, provided, however, such proceeding must be commenced within four months from the effective date of such rule. Each rule shall be promulgated in substantial compliance with the provisions of such sections, provided, however, the inadvertent failure to send notice to any person shall not serve to invalidate any rule promulgated hereunder.

9. Secretary of state. (a) The secretary of state shall:

(i) prescribe standard forms to be used by agencies when submitting for publication in the state register the notices required by this section;

(ii) promptly review each notice submitted by an agency for such publication;

(iii) reject those notices which are not in substantial compliance with the provisions of this section, give prompt notice of such rejection to the agency, and advise such agency on the corrective action required;

(iv) publish all notices and statements, required by this section and section two hundred one-a of this chapter, in the state register as soon as practicable; and

(v) prescribe guidance, developed in consultation with the office of information technology services, for online posting of text and information pursuant to this section.

(b)(i) The secretary of state may, in addition to publication of the state register, publish an electronic copy of the state register which

shall be freely available on the internet.

(ii) Whenever an agency provides an electronic mail address for the submission of comments regarding a notice, the secretary of state shall provide a direct link between the electronic copy of the state register and that electronic mail address, permitting a person viewing the electronic copy of the state register to immediately submit comments by electronic mail.

(iii) The secretary of state shall provide that the direct link between the electronic copy of the state register and the electronic mail address provided by an agency.

(iv) Nothing contained in this paragraph shall impose upon the secretary of state or any agency any responsibility for delivery or failure of delivery of comments submitted through the direct link between the electronic copy of the state register and the electronic mail address provided by an agency in the event of any failure, incompatibility, or lack of function in any computer or communications hardware or software, regardless of whether such hardware or software is or is not within the control of the secretary of state or agency.

§ 202-a. Regulatory impact. 1. In developing a rule, an agency shall, to the extent consistent with the objectives of applicable statutes, consider utilizing approaches which are designed to avoid undue deleterious economic effects or overly burdensome impacts of the rule upon persons, including persons residing in New York state's rural areas, directly or indirectly affected by it or upon the economy or administration of state or local governmental agencies. Such approaches shall include, but not be limited to, the specification of performance standards rather than design standards.

2. Each agency shall, except as provided in subdivision five of this section, issue a regulatory impact statement for a rule proposed for adoption or a rule adopted on an emergency basis.

3. Each regulatory impact statement shall contain:

(a) Statutory authority. A statement analyzing the statutory authority for the rule, including but not limited to the agency's interpretation

of the legislative objectives of such authority;

(b) Needs and benefits. A statement setting forth the purpose of, necessity for, and benefits derived from the rule, a citation for and summary, not to exceed five hundred words, of each scientific or statistical study, report or analysis that served as the basis for the rule, an explanation of how it was used to determine the necessity for and benefits derived from the rule, and the name of the person that produced each study, report or analysis;

(c) Costs. A statement detailing the projected costs of the rule, which shall indicate:

(i) the costs for the implementation of, and continuing compliance with, the rule to regulated persons;

(ii) the costs for the implementation of, and continued administration of, the rule to the agency and to the state and its local governments; and

(iii) the information, including the source or sources of such information, and methodology upon which the cost analysis is based; or

(iv) where an agency finds that it cannot fully provide a statement of such costs, a statement setting forth its best estimate, which shall indicate the information and methodology upon which such best estimate is based and the reason or reasons why a complete cost statement cannot be provided;

(d) Paperwork. A statement describing the need for any reporting requirements, including forms and other paperwork, which would be required as a result of the rule;

(e) Local government mandates. A statement describing any program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district;

(f) Duplication. A statement identifying relevant rules and other legal requirements of the state and federal governments, including those which may duplicate, overlap or conflict with the rule. If the statement indicates that the rule would duplicate, overlap or conflict with any other relevant rule or legal requirement, the statement should also identify all efforts which the agency has or will undertake to resolve, or minimize the impact of, such duplication, overlap or conflict on regulated persons, including, but not limited to, seeking waivers of or

exemptions from such other rules or legal requirements, seeking amendment of such other rules or legal requirements, or entering into a memorandum of understanding or other agreement concerning such other rules or legal requirements;

(g) Alternative approaches. A statement indicating whether any significant alternatives to the rule were considered by the agency, including a discussion of such alternatives and the reasons why they were not incorporated into the rule;

(h) Federal standards. A statement identifying whether the rule exceeds any minimum standards of the federal government for the same or similar subject areas and, if so, an explanation of why the rule exceeds such standards; and

(i) Compliance schedule. A statement indicating the estimated period of time necessary to enable regulated persons to achieve compliance with the rule.

4. To reduce paperwork on the agencies, an agency may:

(a) Consider a series of closely related and simultaneously proposed rules as one rule for the purpose of submitting a consolidated regulatory impact statement; and

(b) Submit a consolidated regulatory impact statement for any series of virtually identical rules proposed in the same year.

5. (a) An agency may claim an exemption from the requirements of this section for a rule that involves only a technical amendment, provided, however, the agency shall state in the notice, prepared pursuant to section two hundred two of this chapter, the reason or reasons for claiming such exemption.

(b) A rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter shall be exempt from the requirements of this section.

(c) A rule determined by an agency to be a consensus rule and proposed pursuant to subparagraph (i) of paragraph (b) of subdivision one of section two hundred two of this article shall be exempt from the requirements of this section.

6. Each agency shall issue a revised regulatory impact statement when:

(a) the information presented in the statement is inadequate or incomplete, provided, however, such revised statement shall be submitted as soon as practicable to the secretary of state for publication in the state register, provided, further, if such statement exceeds two thousand words, the notice shall include only a summary of such statement in less than two thousand words;

(b) a proposed rule contains any substantial revisions and such revisions necessitate that such statement be modified. A revised statement shall describe the reasons for such changes and shall include any modifications in the regulatory impact statement that are necessary as a result of such changes; or

(c) there are no substantial revisions in the proposed rule but there are changes in the text of the rule as adopted when compared with the text of the latest published version of the proposed rule and such changes would necessitate that such statement be modified. A revised statement shall describe the reasons for such changes and shall include any modifications in the regulatory impact statement that are necessary as a result of such changes.

§ 202-b. Regulatory flexibility for small businesses. 1. In developing a rule, the agency shall consider utilizing approaches that will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the rule on small businesses and local governments. Consistent with the objectives of applicable statutes, the agency shall consider such approaches as:

(a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small businesses and local governments or the time needed by small businesses or local governments to come into compliance with the rule;

(b) the use of performance rather than design standards; and

(c) an exemption from coverage by the rule, or by any part thereof, for small businesses and local governments so long as the public health, safety or general welfare is not endangered.

1-a. In developing a rule for which a regulatory flexibility analysis

is required and which involves the establishment or modification of a violation or of penalties associated with a violation, the agency shall: (a) include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement; or (b) include in the regulatory flexibility analysis an explanation of why no such cure period was included in the rule.

2. In proposing a rule for adoption or in adopting a rule on an emergency basis, the agency shall issue a regulatory flexibility analysis regarding the rule being proposed for adoption or the emergency rule being adopted. A copy of such analysis and any finding, and reasons for such finding, pursuant to subdivision three of this section, shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the office of business permits and regulatory assistance and the administrative regulations review commission at the time such analysis is submitted to the secretary of state for publication and, upon written request, a copy shall be sent to any other person. Each regulatory flexibility analysis shall contain:

(a) a description of the types and an estimate of the number of small businesses and local governments to which the rule will apply;

(b) a description of (i) the reporting, recordkeeping and other compliance requirements of the rule, and (ii) the kinds of professional services that a small business or local government is likely to need in order to comply with such requirements;

(c) an estimate of the initial capital costs and an estimate of the annual cost of complying with the rule, with an indication of any likely variation in such costs for small businesses or local governments of different types and of differing sizes;

(d) an assessment of the economic and technological feasibility of compliance with such rule by small businesses and local governments;

(e) an indication of how the rule is designed to minimize any adverse economic impact of such rule on small businesses and local governments, including information regarding whether the approaches suggested in subdivision one of this section or other similar approaches were considered; and

(f) a statement indicating how the agency complied with subdivision

six of this section.

3. (a) This section shall not apply to any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter, nor shall it apply to any rule which does not impose an adverse economic impact on small businesses or local governments and which the agency finds would not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments. The agency's finding and the reasons upon which the finding was made, including what measures the agency took to ascertain that the rule would not impose such compliance requirements, or adverse economic impact on small businesses or local governments, shall be included in the rule making notice as required by section two hundred two of this chapter.

(b) A rule determined by an agency to be a consensus rule and proposed pursuant to subparagraph (i) of paragraph (b) of subdivision one of section two hundred two of this article shall be exempt from the requirements of this section.

4. In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purpose of complying with subdivision two of this section.

5. In complying with the provisions of subdivision two of this section, an agency may provide either a quantifiable or numerical description of the effects of a rule or more general descriptive statements if quantification is not practicable or reliable.

6. When any rule is proposed for which a regulatory flexibility analysis is required, the agency shall assure that it has actively solicited the participation of small businesses and local governments in the rule making through activities in addition to publication in the state register and posting on the agency's website, such as:

(a) the publication of a general notice for the proposed rule making in publications likely to be obtained by small businesses and local governments of the types affected by the proposed rule;

(b) the direct notification of interested small businesses and local

governments affected by the proposed rule or organizations representing the interests of such entities;

(c) the conduct of special open conferences concerning the proposed rule for small businesses and local governments affected by the rule; and

(d) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rule making by small businesses and local governments.

7. Each agency shall issue a revised regulatory flexibility analysis when:

(a) the information presented in the analysis submitted pursuant to this section is inadequate or incomplete, provided, however, such revised analysis shall be submitted as soon as practicable to the secretary of state for publication in the state register, provided, further, if such statement exceeds two thousand words, the notice shall include only a summary of such statement in less than two thousand words;

(b) a proposed rule contains any substantial revisions and such revisions necessitate that such analysis be modified; or

(c) there are no substantial revisions in the proposed rule but there are changes in the text of the rule as adopted when compared with the text of the latest published version of the proposed rule and such changes would necessitate that such analysis be modified.

§ 202-bb. Rural area flexibility analysis. 1. Intent. The legislature hereby finds, determines and declares that:

(a) The capacity of public and private sector interests in rural areas to respond to state agency regulations is often constrained by an operating environment distinctly different from that found in suburban and metropolitan areas of the state;

(b) Factors such as population sparsity, small community size, limited access to financial and technical assistance, undeveloped services delivery systems, lack of economies of scale and extensive reliance on part-time and volunteer services providers inhibits rural ability to effectively address increasingly complex and stringent regulatory

requirements;

(c) In order to maximize sensitivity to rural strengths and limitations, the state must continue to promote a framework which enhances state and local cooperation in meeting rural needs; and

(d) Enhancement of this chapter to include a more thorough assessment of regulatory impact and alternatives for rural areas can provide an improved dialogue on critical issues, while fostering a more cohesive and effective state/local partnership.

2. Authorization. (a) In addition to, and consistent with, the provisions of sections two hundred two-a and two hundred two-b of this article, agencies shall seek approaches that allow them to address their statutory responsibilities while considering the impact of their actions on public and private sector interests located in rural areas of the state.

(b) In developing a rule, the agency shall consider utilizing approaches that will accomplish the objectives of applicable statutes while minimizing any adverse impact of the rule on public and private sector interests in rural areas. Consistent with the objectives of applicable statutes, the agency shall consider such approaches as:

(i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to rural areas;

(ii) increased use of performance or outcome standards rather than design or input standards; and

(iii) an exemption from coverage by the rule, or by any part thereof, so long as the public health, safety or general welfare is not endangered.

3. In proposing a rule for adoption or in adopting a rule on an emergency basis, the agency shall issue a rural area flexibility analysis regarding the rule being proposed for adoption or the emergency rule being adopted. A copy of such analysis and any finding, and reasons for such finding, pursuant to this section, shall be submitted in writing, and may be transmitted electronically in accordance with article three of the state technology law, to the governor, the temporary president of the senate, the speaker of the assembly, the

office for regulatory and management assistance and the administrative regulations review commission at the time such analysis is submitted or electronically transmitted to the secretary of state for publication and, upon written or electronic request, a copy shall be sent or electronically transmitted to any other person. Each rural area flexibility analysis shall contain:

(a) A description of the types and an estimate of the number of rural areas to which the rule will apply;

(b) A description of (i) the reporting, recordkeeping and other compliance requirements of the rule, and (ii) the kinds of professional services that are likely to be needed in a rural area in order to comply with such requirements;

(c) An estimate of the initial capital costs and an estimate of the annual cost of complying with the rule, with an indication of any likely variation in such costs for different types of public and private entities in rural areas;

(d) An indication of how the rule is designed to minimize any adverse impact of such rule on rural areas, including information regarding whether the approaches suggested in subdivision two of this section or other similar approaches were considered; and

(e) A statement indicating how the agency complied with subdivision seven of this section.

4. (a) This section shall not apply to any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter, nor shall it apply to any rule which does not impose an adverse impact on rural areas and which the agency finds would not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The agency's finding and the reasons upon which the finding was made, including what measures the agency took to ascertain that the rule would not impose such compliance requirements or adverse impact, shall be included in the rule making notice as required by section two hundred two of this chapter.

(b) A rule determined by an agency to be a consensus rule and proposed pursuant to subparagraph (i) of paragraph (b) of subdivision one of section two hundred two of this article shall be exempt from the

requirements of this section.

5. In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purpose of complying with subdivision three of this section.

6. In complying with the provisions of subdivision three of this section, an agency may provide either a quantifiable or numerical description of the effects of a rule or more general descriptive statements if quantification is not practicable or reliable.

7. When any rule is proposed for which a rural area flexibility analysis is required, the agency shall assure that public and private interests in rural areas have been given an opportunity to participate in the rule making through such activities as:

- (a) the publication of a general notice of the proposed rule making;
- (b) notification of public and private interests in rural areas directly affected by the proposed rule;
- (c) the conduct of special public hearings or meetings concerning the proposed rule for those public and private interests affected by the rule; and
- (d) the adoption or modification of agency procedural rules that will minimize the cost or complexity of participation in the rule making.

8. Each agency shall issue a revised rural area flexibility analysis when:

- (a) the information presented in the analysis submitted pursuant to this section is inadequate or incomplete, provided, however, such revised analysis shall be submitted as soon as practicable to the secretary of state for publication in the state register, provided, further, if such statement exceeds two thousand words, the notice shall include only a summary of such statement in less than two thousand words;
- (b) a proposed rule contains any substantial revisions and such revisions necessitate that such analysis be modified; or
- (c) there are no substantial revisions in the proposed rule but there are changes in the text of the rule as adopted when compared with the

text of the latest published version of the proposed rule and such changes would necessitate that such analysis be modified.

§ 202-d. Regulatory agenda. * 1. (a) The departments of health, education, environmental conservation, financial services, labor, agriculture and markets, motor vehicles and state, the offices of children and family services and temporary and disability assistance, the division of housing and community renewal, the state gaming commission, the office of mental health, the office for people with developmental disabilities and the workers' compensation board, and any other department or agency specified by the governor or his or her designee shall, and any other agency may, in its discretion, submit in writing or electronically in accordance with article three of the state technology law to the secretary of state, for publication in any regular issue of the state register published during the month of January, a regulatory agenda to solicit comments concerning any rule which the agency is considering to propose, but for which no notice of proposed rule making has been submitted pursuant to subdivision one of section two hundred two of this article.

(b) A regulatory agenda shall be comprised of a list and brief description of subject matter being considered for rule making and the name, public office, address, e-mail address and telephone number of the agency representative, knowledgeable on such regulatory agenda, from whom any information may be obtained, including any draft version of a potential rule that an agency is making publicly available, and to whom written comments may be submitted concerning such regulatory agenda.

(c) Agencies shall publish the regulatory agendas and information related to such agendas on their respective websites. An agency may update the regulatory agenda on its website by adding a description of a rule which the agency has begun to consider proposing after publication of its regulatory agenda in the state register. Such description shall identify the date on which the description is first listed in the regulatory agenda and shall conspicuously indicate that the description has been newly listed for a period of not less than thirty days after such date. Updating a regulatory agenda on its website shall not require an agency to submit any additional information for publication in the

state register related to such update.

(d) An agency shall identify each rule described in its regulatory agenda for which a regulatory flexibility analysis or a rural area flexibility analysis may be required, and shall provide outreach as appropriate to potentially affected small businesses, local governments and public and private interests in rural areas. Such outreach may include solicitation of input from potentially affected parties 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.

* NB Effective until December 31, 2028

* 1. An agency may, in its discretion, submit in writing or electronically in accordance with article three of the state technology law to the secretary of state, for publication in the first regular issue of the state register published during the months of January, May and September, a regulatory agenda to afford the agency an opportunity to solicit comments concerning any rule which the agency is considering proposing, but for which no notice of proposed rule making has been submitted pursuant to subdivision one of section two hundred two of this article. A regulatory agenda shall be comprised of summaries of such rules. Each summary shall, in less than two thousand words, contain, in so far as practicable:

(a) a description of the rule which the agency is considering;

(b) a citation to the statutory authority, including particular sections and subdivisions, which authorizes the rule;

(c) a schedule of the dates for hearings, meetings or other opportunities for public participation in the development of the rule, if any;

(d) the probable date on which the agency anticipates submitting, pursuant to section two hundred two of this chapter, a notice of proposed rule making for such rule if known;

(e) the name, public office, address and telephone number of the agency representative, knowledgeable on such rule, from whom any information may be obtained and to whom written comments may be submitted concerning such rule; and

(f) any other information which the agency determines will serve the public interest.

* NB Effective December 31, 2028

* 2. Nothing in this section shall:

(a) preclude an agency from adopting a rule for which a summary has not appeared in a regulatory agenda or from adopting a rule different than one summarized in a regulatory agenda; provided, however, that if a rule is proposed by an agency required to submit a regulatory agenda pursuant to subdivision one of this section on a matter not included in a regulatory agenda, the proposing agency shall indicate in the notice of proposed rule making that the rule was not under consideration at the time the regulatory agenda was submitted for publication; or

(b) require an agency to adopt a rule for which a summary has appeared in a regulatory agenda.

* NB Effective until December 31, 2028

* 2. Nothing in this section shall:

(a) preclude an agency from adopting a rule for which a summary has not appeared in a regulatory agenda or from adopting a rule different than one summarized in a regulatory agenda; or

(b) require an agency to adopt a rule for which a summary has appeared in a regulatory agenda.

* NB Effective December 31, 2028

3. The secretary of state shall adopt rules necessary for the publication of regulatory agendas, including but not limited to standard forms to be used for the submission of regulatory agendas, a schedule prescribing when such agendas must be submitted for publication, and any identification number system.

§ 202-e. Guidance documents; availability to public. 1. Not less than once each year, every agency shall submit to the secretary of state for publication in the state register a list of all guidance documents on which the agency currently relies, and provide information on where and how regulated parties and members of the public may inspect and obtain copies of any such document; provided, however, that the department of environmental conservation shall be exempt from the requirements of this subdivision. Unless otherwise provided for by law, an agency may make such documents available as provided in the freedom of information law,

and may charge fees pursuant to such law for copies of any such document.

2. The secretary of state may exempt an agency from compliance with the requirements of subdivision one of this section upon a determination that the agency has published on its website the full text of all guidance documents on which it currently relies. The secretary of state shall publish a notice of such determination identifying the website in the state register.

3. Nothing in this section shall be construed as authorizing or requiring the publication of any guidance document where such publication is prohibited or limited by law.

4. Not less than once every five years, every agency shall conduct a process for reviewing and updating all guidance documents on which it currently relies. In conducting such process, the agency shall obtain feedback from regulated parties and members of the public who are directly or indirectly affected by the guidelines.

5. The secretary of state may adopt regulations to implement the provisions of this section.

*** § 202-f. Public hearings.** 1. Whenever a public hearing is held on a proposed rule pursuant to this chapter, unless otherwise provided in law, an agency is authorized to utilize innovative techniques to enhance public participation in rule making, including but not limited to allowing the public to ask questions of agency personnel for a portion of such hearing, organizing such hearing as a roundtable discussion, scheduling an evening or weekend hearing, and using digital, broadcasting and/or teleconferencing technologies; provided, however, that no such innovative techniques shall be used in a manner which diminishes the ability which members of the public would otherwise have to comment on the proposed rule at a public hearing. Each agency listed in subdivision four of this section shall, and any other agency may, include in its annual report a description and analysis of its use of

innovative techniques pursuant to this subdivision.

2. Except as provided in subdivision three of this section, if the workers' compensation board, the state education department, the department of financial services, the department of labor, or the office of temporary and disability assistance receive a petition subscribed by not fewer than five hundred persons residing in this state, or if the department of health or department of environmental conservation receive a petition subscribed by not fewer than seven hundred fifty persons residing in this state, requesting a public hearing on any rule or rules which have been proposed by the agency, or have been described in the regulatory agenda submitted by the agency pursuant to section two hundred two-d of this article, which an agency may require to be submitted on a petition form it has promulgated, such agency shall hold at least one public hearing on the rule or rules; provided, however, that any such petition on a rule which has been proposed must be received by the agency not later than the thirtieth day before the last date for submission of comments. Any rule issued by the department of health that is also subject to review by the public health and health planning commission shall not be subject to the provisions of this subdivision. Any agency that receives a petition after the thirtieth day before the last date for submission of comments and any agency not listed in subdivision four of this section may elect to hold a hearing upon receipt of a petition. Due consideration shall be given to any request in a petition that a hearing be conducted in a particular region.

3. An agency shall not be required to hold a public hearing pursuant to subdivision two of this section (a) on a rule for which a hearing is required by law and has been scheduled or held; (b) on a consensus rule; (c) on a rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter; or (d) a rule adopted on an emergency basis until a notice of proposed rulemaking has been issued. When a public hearing has been requested for any rule described in a regulatory agenda, the agency shall not be required to schedule a public hearing until such time as the rule is proposed pursuant to this chapter.

4. The following agencies shall engage in the reporting provided for in subdivision one of this section and hold hearings as provided for in subdivisions two and three of this section: the workers' compensation board and the departments of education, environmental conservation, health, financial services, labor and family assistance.

* NB Repealed January 1, 2027

§ 203. Filing; effective date. 1. Except as provided in subdivision two of this section, no rule shall become effective until it is filed with the secretary of state and the notice of adoption is published in the state register pursuant to subdivision five of section two hundred two of this article, unless: (i) a later date is required by statute or is specified in the rule, (ii) adopted as an emergency rule pursuant to subdivision six of section two hundred two of this article, or (iii) defined as a rule in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter. Each rule submitted for filing shall have attached thereto the certificate required under subdivision two of section one hundred two of the executive law.

2. (a) An agency may, after a rule is filed with the secretary of state pursuant to subdivision one of this section and prior to the effective date of such rule, amend, suspend or repeal such rule prior to the effective date without complying with the provisions of subdivision one of section two hundred two of this article. If an agency amends, suspends or repeals a rule pursuant to this subdivision, such agency shall file a notice of adoption pursuant to subdivision five of section two hundred two of this article, provided, however, that such notice of adoption shall identify the rule which is being amended, suspended or repealed pursuant to this subdivision, provided, further, for the purposes of compliance with subparagraphs (iii), (v) and (vi) of paragraph (c) of subdivision five of such section two hundred two, the text of the rule as adopted pursuant to subdivision one of this section shall be compared with the text of the rule being amended, suspended or repealed pursuant to this subdivision.

(b) An agency may not amend, suspend or repeal a rule pursuant to this

subdivision if such action would constitute a substantial revision of the rule as adopted. To determine if such action constitutes a substantial revision of the adopted rule, such amendment, suspension or repeal shall be compared with the text of the rule which was filed with the secretary of state pursuant to subdivision one of this section. The provisions of this paragraph shall not apply if such amendment, suspension or repeal only delays the effective date of such rule.

3. The secretary of state shall reject any rule submitted for filing by an agency where the notice of proposed rule making for such rule has expired pursuant to the provisions of section two hundred two of this chapter.

4. If a rule requires a regulated party to develop a written plan or compliance document which must be submitted to or retained for inspection by the agency, the agency is required to, upon request of one or more regulated parties, prepare a model of such a written plan or compliance document to provide guidance as to the content and form of such written plan or compliance document and the minimum elements which such written plan or compliance document should contain. The availability of any such model plan or document shall be communicated to regulated parties through publication in the state register and by any other means which the agency determines to be efficient and effective, and shall be made available to regulated parties and the public within the time frame established for submission of the written plan or compliance documents. Unless otherwise prohibited by law, when an agency has prepared a model plan or document pursuant to this subdivision, it may extend the final date for submitting a written plan or compliance document for an additional period, not to exceed ninety days, if such an extension is deemed necessary to permit regulated parties to use the model plan as guidance in developing their written plans or compliance documents. Whenever a model plan is prepared, the agency shall cause a notice to be published in the state register indicating that it has prepared a model plan and identifying the written plan or compliance document for which the model plan or document has been prepared. Such notice shall also indicate whether the final date for submitting a written plan or compliance document has been extended

pursuant to this subdivision, and, if so, shall set forth the new final date for submission.

§ 204. Declaratory rulings by agencies. 1. On petition of any person, an agency may issue a declaratory ruling with respect to (i) the applicability to any person, property, or state of facts of any rule or statute enforceable by it, or (ii) whether any action by it should be taken pursuant to a rule. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. A declaratory ruling shall be binding upon the agency unless it is altered or set aside by a court. The agency may not retroactively change a valid declaratory ruling, but nothing in this section shall prevent an agency from prospectively changing any declaratory ruling. A declaratory ruling shall be made available to the public. A declaratory ruling shall be subject to review in the manner provided for in article seventy-eight of the civil practice law and rules.

2. (a) Within thirty days of receipt of a petition with respect to paragraph (ii) of subdivision one of this section, an agency shall issue either a declaratory ruling or a statement declining to issue a declaratory ruling, unless the agency's rules provide for a different time period not to exceed sixty days from receipt of such petition.

(c) Notwithstanding any inconsistent provision of law, a person may submit a petition in the manner provided for in article seventy-eight of the civil practice law and rules without first applying for a declaratory ruling pursuant to paragraph (ii) of subdivision one of this section, or to the office for an advisory opinion pursuant to this subdivision. A person may concurrently petition the court pursuant to article seventy-eight of the civil practice law and rules and petition the agency and the office pursuant to this subdivision.

§ 204-a. Alternate methods for implementing regulatory mandates. 1. As used in this section:

(a) "local government" means any county, city, town, village, school

district, fire district or other special district;

(b) "regulatory mandate" means any rule which requires one or more local governments to create a new program, increase the level of service for an existing program or otherwise comply with mandatory requirements; and

(c) "petition" means a document submitted by a local government seeking approval of an alternate method for implementing a regulatory mandate.

2. A petition shall include:

(a) an indication that submission has been approved by the governing body of the local government or by an officer duly authorized by the governing body to do so;

(b) an identification of the regulatory mandate which is the subject of the petition and information sufficient to establish that the proposed alternate method of implementation is consistent with and will effectively carry out the objectives of the regulatory mandate;

(c) information on the process used by the local government to ensure that all stakeholders have been appropriately involved in the process of developing the alternate method, including where relevant the date of any hearing, forum or other meeting to seek input on the alternate method;

(d) documentation that the petition has been submitted to the authorized agents of any certified or recognized employee organizations representing employees who would be effected by implementation of the alternate method;

(e) a proposed plan and timetable for compiling and reporting information to facilitate evaluation of the effectiveness of the alternate method;

(f) if the state provides financial assistance for complying with the regulatory mandate, any proposed amount or percentage of such assistance which would be returned to the state due to savings from implementing the alternate method; and

(g) the name, public office address and telephone number of the representative of the local government who will coordinate requests for additional information on the petition.

3. Two or more local governments may submit a petition jointly, provided that each local government meets the requirements of paragraphs (a), (c), (d) and (g) of subdivision two of this section, and provided that the petition addresses the manner in which responsibility for implementation will be allocated between or among the participating local governments.

4. The agency shall cause a notice of the petition to be published in the state register and shall receive comments on the petition for a period of thirty days. Such notice shall either include the full text of the information set forth in the petition or shall set forth the address of a website on which the full text has been posted. The notice shall include the name, public office address and telephone number, and may include a fax number and electronic mail address, of an agency representative from whom additional information on the petition can be obtained and to whom comments on the petition may be submitted.

5. (a) Not later than thirty days after the last day of the comment period, the agency shall approve or disapprove the petition. The agency may approve the petition without change or with such conditions or modifications as the agency deems appropriate. Notice of the agency determination shall be provided in writing to the local government and shall be published in the state register. The agency shall not grant a petition unless it determines that the petition has met the requirements of subdivision two of this section and that the local government has established that the alternate method is consistent with and will effectively carry out the objectives of the regulatory mandate; provided, however, that no petition shall be approved which would result in the contravention of any environmental, health or safety standard or would reduce any benefits or rights accorded by law or rule to third parties. In approving a petition, an agency may waive a statutory provision only if it is specifically authorized by law to waive such provision. An approval shall include a timetable for agency evaluation of the effectiveness of the alternate method.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, upon receipt of an objection to a petition from the authorized agent of any certified or recognized employee organization

representing employees who would be affected by implementation of the alternate method, the agency shall provide any such organizations with an opportunity for a hearing. If an adjudicatory proceeding is requested, the petition shall not be approved unless the agency determines by a preponderance of the evidence that implementing the alternate method would not affect such employees by contravening any environmental, health or safety standard, reducing any rights or benefits or violating the terms of any negotiated agreement, and that all other requirements of this section have been met. The provisions of this subdivision are in addition to and shall not be construed to impair or modify any rights of such employees under any other law, regulation or contract.

6. Nothing in this section shall require a local government to commence or continue an alternate method of implementation if it determines in its sole discretion not to do so, except to the extent that a local government has committed to commencing or continuing an alternate method in a joint petition submitted pursuant to subdivision three of this section. A state agency may rescind its approval of a petition at any time if it determines, based on the information reported pursuant to paragraph (e) of subdivision two of this section or other information available to it, that the alternate method is not effectively carrying out the objectives of the regulatory mandate or is being implemented in a manner detrimental to the public interest.

7. Notwithstanding any other provision of law, implementation of an alternate method approved by an agency pursuant to this section shall be deemed to lawfully meet all requirements of the regulatory mandate. An agency shall retain the authority to enforce compliance with the alternate method in the same manner as it may enforce compliance with the underlying rule. Any action on a petition by a state agency shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

8. In accordance with the timetable established pursuant to subdivision four of this section, the agency shall evaluate the effectiveness of the alternate method in carrying out the objectives of

the regulatory mandate. The evaluation shall identify any savings or other benefits, and any costs or other disadvantages, of implementing the alternate method, and shall address the desirability of incorporating the alternate method into the rules of the agency. Notice of availability of the evaluation shall be published in the state register.

§ 205. Right to judicial review of rules. Unless an exclusive procedure or remedy is provided by law, judicial review of rules may be had upon petition presented under article seventy-eight of the civil practice law and rules, or in an action for a declaratory judgment where applicable and proper. The agency shall be made a party to the proceedings. Such a special proceeding or action may not be maintained unless the petitioner has first requested the agency to pass upon the validity or applicability of the rule in question and action has been taken upon such a request or more than thirty days has elapsed since such request has been filed and no final action has been taken thereon or the agency has not provided for the issuance of such declaratory rulings under section two hundred four. Unless the agency acts upon such request within thirty days of its filing, such request shall be deemed to have been denied. Nothing in this section shall be construed to grant or deny to any person standing to petition under article seventy-eight of the civil practice law and rules or to bring an action for a declaratory judgment or to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is properly asserted.

§ 206. Overlapping regulations; compliance determinations. 1. It is the declared policy of this state to protect and encourage jobs, investment and economic activity and to promote the public health, safety and welfare by administering all regulatory requirements imposed by the state in a fair and reasonable manner.

2. Any person subject to a requirement imposed by a state statute or rule and to a similar requirement imposed by the federal government, may

pursuant to section two hundred four of this chapter, petition the agency administering the state requirement for a declaratory ruling as to whether compliance with the federal requirement will be accepted as compliance with the state requirement. Upon receipt of such petition, the agency shall submit a copy thereof to the office of business permits and regulatory assistance.

3. If the agency determines that compliance with the federal requirement would not satisfy the purposes or relevant provisions of the state statute involved, the agency shall so inform the petitioner in writing stating the reasons therefor and may issue a declaratory ruling to that effect. A copy of such written statement of reasons and any such declaratory ruling shall be submitted by the agency to the office of business permits and regulatory assistance.

4. If the agency determines that compliance with the federal requirement would satisfy the purposes and relevant provisions of the state statute involved but that it would not satisfy the relevant provisions of the state rule involved, the agency shall so inform the petitioner and the office of business permits and regulatory assistance and may initiate a rulemaking proceeding in accordance with this chapter to consider revising such rule to accept compliance with such federal requirement in a manner that is consistent with the requirements and purposes of the state statute.

5. If the agency determines that compliance with the federal requirement would satisfy the purposes and relevant provisions of the state statute involved, and that it would satisfy the relevant provisions of the state rule involved, the agency shall issue a declaratory ruling indicating its intention to accept compliance with the federal requirement as compliance with the state requirement, and the terms and conditions under which it intends to do so. A copy of such declaratory ruling shall be submitted by the agency to the office of business permits and regulatory assistance.

6. The office of business permits and regulatory assistance may consider agency compliance with this section when performing its review

function under section two hundred two-c of this chapter.

§ 207. Review of existing rules. 1. (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.

(b) For any rule for which a regulatory flexibility analysis, rural area flexibility analysis or job impact statement is required, the initial review shall occur no later than in the third calendar year after the year in which the rule is adopted; provided, however, that the agency may propose a different review period in such analysis or statement, along with its justification for doing so, and shall invite public comment thereon. The review period specified for the rule and an assessment of any comments on this issue shall accompany the notice of adoption.

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, 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.

3. If an agency determines that a rule subject to the provisions of this section should be modified, it shall publish a notice of proposed rule making for such rule, which, in addition to the information otherwise required by this article, shall include a statement setting forth a reasoned justification for modification of the rule and an assessment of public comments, prepared in accordance with subdivision four-a of section two hundred two of this article, which were submitted to the agency in response to the listing of the rule in the regulatory agenda. Where appropriate, the agency shall also include in its statement a discussion of the degree to which changes in technology, economic conditions, time required to comply, or other factors in the area affected by the rule necessitate changes in the rule.

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, which were submitted to the agency in response to the listing of the rule in the regulatory agenda.

5. This section shall not apply to any rule which was adopted as a consensus rule or as a minor, obsolete or invalid rule, or to a rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter.

ARTICLE 3

ADJUDICATORY PROCEEDINGS

Section 301. Hearings.

302. Record.

303. Presiding officers.

304. Powers of presiding officers.

305. Disclosure.

306. Evidence.

307. Decisions, determinations and orders.

308. Streamlined optional adjudicatory proceedings for small businesses.

§ 301. Hearings. 1. In an adjudicatory proceeding, all parties shall be afforded an opportunity for hearing within reasonable time.

2. All parties shall be given reasonable notice of such hearing, which notice shall include (a) a statement of the time, place, and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and rules involved, where possible; (d) a short and plain statement of matters asserted; and (e) a statement that interpreter services shall be made available to deaf persons, at no charge, pursuant to this section. Upon application of any party, a more definite and detailed statement shall be furnished whenever the agency finds that the statement is not sufficiently definite or not sufficiently detailed. The finding of the agency as to the sufficiency of definiteness or detail of the statement or its failure or refusal to furnish a more definite or detailed statement shall not be subject to judicial review. Any statement furnished shall be deemed, in all respects, to be a part of the notice of hearing.

3. Agencies shall adopt rules governing the procedures on adjudicatory proceedings and appeals, in accordance with provisions of article two of this chapter, and shall prepare a summary of such procedures in plain language. Agencies shall make such summaries available to the public upon request, and a copy of such summary shall be provided to any party cited by the agency for violation of the laws, rules or orders enforced by the agency.

4. All parties shall be afforded an opportunity to present written argument on issues of law and an opportunity to present evidence and such argument on issues of fact, provided however that nothing contained herein shall be construed to prohibit an agency from allowing parties to present oral argument within a reasonable time. In fixing the time and place for hearings and oral argument, due regard shall be had for the convenience of the parties.

5. Unless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.

6. Whenever any deaf person is a party to an adjudicatory proceeding before an agency, or a witness therein, such agency 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. The agency conducting the adjudicatory proceeding shall determine a reasonable fee for all such interpreting services which shall be a charge upon the agency.

§ 302. Record. 1. The record in an adjudicatory proceeding shall include: (a) all notices, pleadings, motions, intermediate rulings; (b) evidence presented; (c) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose; (d) questions and offers of proof, objections thereto, and rulings thereon; (e) proposed findings and exceptions, if any; (f) any findings of fact, conclusions of law or other recommendations made by a presiding officer; and (g) any decision, determination, opinion, order or report rendered.

2. The agency shall make a complete record of all adjudicatory proceedings conducted before it. For this purpose, unless otherwise required by statute, the agency may use whatever means it deems appropriate, including but not limited to the use of stenographic

transcriptions or electronic recording devices. Upon request made by any party upon the agency within a reasonable time, but prior to the time for commencement of judicial review, of its giving notice of its decision, determination, opinion or order, the agency shall prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy of the record and transcript or any part thereof to any party as he may request. Except when any statute provides otherwise, the agency is authorized to charge not more than its cost for the preparation and furnishing of such record or transcript or any part thereof, or the rate specified in the contract between the agency and a contractor if prepared by a private contractor.

3. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

4. Affirmation of truth of statement. The statement of any person wherever made, subscribed and affirmed by that person to be true under the penalties of perjury, may be used in an administrative proceeding in New York in lieu of and with the same force and effect as an affidavit. Such affirmation shall be in substantially the following form:

I affirm this ____ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an administrative hearing.

(Signature)

§ 303. Presiding officers. Except as otherwise provided by statute, the agency, one or more members of the agency, or one or more hearing officers designated and empowered by the agency to conduct hearings shall be presiding officers. Hearings shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding.

Whenever a presiding officer is disqualified or it becomes impractical for him to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.

§ 304. Powers of presiding officers. Except as otherwise provided by statute, presiding officers are authorized to:

1. Administer oaths and affirmations.

2. Sign and issue subpoenas in the name of the agency, at the request of any party, requiring attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence and said subpoenas shall be regulated by the civil practice law and rules. Nothing herein contained shall affect the authority of an attorney for a party to issue such subpoenas under the provisions of the civil practice law and rules.

3. Provide for the taking of testimony by deposition.

4. Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.

5. Direct the parties to appear and confer to consider the simplification of the issues by consent of the parties.

6. Recommend to the agency that a stay be granted in accordance with section three hundred four, three hundred six or three hundred seven of the military law.

§ 305. Disclosure. Each agency having power to conduct adjudicatory proceedings may adopt rules providing for discovery and depositions to the extent and in the manner appropriate to its proceedings.

§ 306. Evidence. 1. Irrelevant or unduly repetitious evidence or cross-examination may be excluded. Except as otherwise provided by statute, the burden of proof shall be on the party who initiated the proceeding. No decision, determination or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with substantial evidence. Unless otherwise provided by any statute, agencies need not observe the rules of evidence observed by courts, but shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, an agency may, for the purpose of expediting hearings, and when the interests of parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

2. All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

3. A party shall have the right of cross-examination.

4. Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

§ 307. Decisions, determinations and orders. 1. A final decision, determination or order adverse to a party in an adjudicatory proceeding

shall be in writing or stated in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision, determination or order shall include a ruling upon each proposed finding. A copy of the decision, determination or order shall be delivered or mailed forthwith to each party and to his attorney of record.

2. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

This subdivision does not apply (a) in determining applications for initial licenses for public utilities or carriers; or (b) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers.

3. (a) Each agency shall maintain an index by name and subject of all written final decisions, determinations and orders rendered by the agency in adjudicatory proceedings. For purposes of this subdivision, such index shall also include by name and subject all written final decisions, determinations and orders rendered by the agency pursuant to a statute providing any party an opportunity to be heard, other than a rule making. Such index and the text of any such written final decision, determination or order shall be available for public inspection and copying. Each decision, determination and order shall be

indexed within sixty days after having been rendered.

(b) An agency may delete from any such index, decision, determination or order any information that, if disclosed, would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of the public officers law and may also delete at the request of any person all references to trade secrets that, if disclosed, would cause substantial injury to the competitive position of such person. Information which would reveal confidential material protected by federal or state statute, shall be deleted from any such index, decision, determination or order.

§ 308. Streamlined optional adjudicatory proceedings for small businesses. Unless otherwise prohibited by law, an agency may adopt regulations providing for use at the option of a small business of streamlined adjudicatory proceedings conducted by mail, electronic mail, telephone conference or videoconference. In adopting such regulations, the agency shall:

1. consider the types of programs and issues for which such streamlined proceedings may reasonably be conducted, taking into account (a) the complexity of the matters to be resolved in the proceeding, (b) the severity of potential sanctions, (c) any necessity for personal appearances, including but not limited to requirements for sworn testimony or cross-examination, and (d) any potential reduction in the costs and burdens of participating in the proceeding for the agency and for other parties, and shall appropriately limit the availability of streamlined proceedings to programs and issues in which the public interest in fair outcomes can continue to be assured;

2. ensure that a streamlined proceeding may only be used at the option of the respondent small business with the consent of the agency and any other necessary party to the proceeding, and that the rights of respondents and other parties will not be diminished in any respect by virtue of participation in a streamlined proceeding;

3. specify the format or formats for remote conduct of streamlined

proceedings;

4. establish procedures for requesting and scheduling such proceedings, for the conduct of such proceedings, and for the development of a complete record as provided in section three hundred two of this article; and

5. provide that, in the event that it becomes impractical or inappropriate to continue a proceeding commenced pursuant to this section as a streamlined proceeding, such proceeding may be rescheduled as an adjudicatory proceeding pursuant to section three hundred one of this article without prejudice to any party.

ARTICLE 4

LICENSES

Section 401. Licenses.

402. Electronic filing of applications for certain business permits.

§ 401. Licenses. 1. When licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning adjudicatory proceedings apply. For purposes of this act, statutes providing an opportunity for hearing shall be deemed to include statutes providing an opportunity to be heard.

2. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court, provided that this subdivision shall not affect any valid agency action then in effect summarily suspending such license.

3. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered, effective on the date specified in such order or upon service of a certified copy of such order on the licensee, whichever shall be later, pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

4. When the hearing seeks the revocation of a license or permit previously granted by the agency, either party shall, upon demand and at least seven days prior to the hearing, disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses, provided, however, the provisions of this subdivision shall not be deemed to require the disclosure of information or material otherwise protected by law from disclosure, including information and material protected because of privilege or confidentiality. If, after such disclosure, a party determines to rely upon other witnesses or information, the party shall, as soon as practicable, supplement its disclosure by providing the names of such witnesses or the additional documents.

§ 402. Electronic filing of applications for certain business permits.

1. Notwithstanding any provision of law to the contrary, a state agency may, by promulgation of regulations, permit an application for a business permit or other license subject to the provisions of this section to be filed with such agency, subscribed and affirmed by the applicant as true under penalty of perjury where statute otherwise requires that such signature be acknowledged, verified or sworn under oath.

2. Notwithstanding any provision of law to the contrary, a state agency may, by promulgation of regulations, permit any application for a business permit or other license subject to the provisions of this section to be submitted to such agency by electronic means, provided that any signature required thereon shall meet the requirements of subdivision three of section three hundred two of the state technology

law, and the use of electronic records shall meet the requirements of subdivision one of section three hundred five of the state technology law.

3. This section shall apply to applications for the issuance, modification or renewal of any permit, license, certificate, approval, registration, charter, or similar form of permission or authority required by law, or by state agency rules having the force and effect of law, which is required for a business undertaking, project or activity for an applicant, but shall not include bonds or other forms of security required to be submitted by applicants, any individual licenses for practicing a profession prescribed in title eight of the education law, filings under the uniform commercial code, or routine licenses and permits for individual privileges, including licenses for operating a motor vehicle.

ARTICLE 5 REPRESENTATION

Section 501. Representation.

§ 501. Representation. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before an agency, every party or person shall be accorded the right to appear in person or by or with counsel. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency.