

## Rulemaking Process

The State Legislature and Governor are responsible for enacting laws in New York. Rule making powers of state agencies are derived from those state laws. Agencies empowered to develop “rules and regulations” are also responsible for adhering to any other applicable provisions of law, including any pertinent rule making processes in the State Administrative Procedure Act.

The Department of State is responsible for producing the weekly New York State Register, which plays a central role in the rule making process. The Register contains rule making notices, including those pertaining to newly proposed rules and proposed changes to existing rules. Included in a “Notice of Proposed Rule Making” are the full text of the rule, or a summary if the text is over 2,000 words; the time, date and location of any public hearing(s); and the name and address of the agency contact person to whom comments may be addressed. Publication of this notice initiates the public comment period.

In some cases, public hearings will also be held to provide opportunity to provide oral comments on a proposed rule. Written and oral comments must be taken into consideration by an agency prior to adoption of a rule. Because it is important for citizens to have an opportunity to comment, the Legislature has provided that agencies must accept comments for at least 60 days after the proposal is published in the Register. Agencies may elect to allow more than the minimum number of days for comment and to hold public hearings even if they are not required to do so.

After publication in the Register and receipt of public comment, an agency may either adopt, revise or withdraw the proposal. If adopted, the agency must file the full text of the rule with the Department of State. At the same time, a “Notice of Adoption” is submitted for publication in the Register, to indicate that the proposal has been adopted and the date that the adopted rule will become effective. If the agency wishes to make substantial changes to the proposed rule, the agency must submit a “Notice of Revised Rule Making” and accept public comment for at least another 45 days. If a proposal is withdrawn, the agency cannot adopt the same or similar proposal without filing a new “Notice of Proposed Rule Making” and providing the public with a new minimum 60-day public comment period.

## Public Comments

Public comment on proposed rules is encouraged and may be submitted to the agency that is proposing the rule. To be considered, comments should reach the agency before expiration of the public comment period. There is a minimum 60-day public comment period after publication in the Register for Notices of Proposed Rule Making, and a 45-day public comment period for Notices of Revised Rule Making. If a public hearing is required by statute, public comments are accepted for at least five (5) days after the last hearing. Agencies are also required to specify in each notice the last date of the public comment period.

The Administrative Regulations Review Commission (ARRC) reviews newly proposed regulations to examine issues of compliance with legislative intent, impact on the economy, and impact on affected parties.

When a public hearing on a proposed rule is statutorily required: the hearing may not be held until at least 60 days after the publication date of the notice; and comments must be accepted for at least 5 days after the last required hearing. When a public comment period for a proposed rule is scheduled to end on a Saturday, Sunday or public holiday, comments are accepted through the next succeeding business day.

## Emergency Rulemaking

If an agency finds that the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare, the agency may adopt the rule on an emergency basis.

Such emergency rule shall not remain in effect for longer than ninety (90) days after being filed with the secretary of state.

A notice of emergency adoption shall include:

a description 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;

the effective date of the rule and the specific date the emergency rule will expire;

contain the complete text of the rule as adopted;

a regulatory impact statement or a statement setting forth that the regulatory impact statement will appear in the state register within thirty (30) days of the effective date of the emergency rule; and

a regulatory flexibility analysis and a rural area flexibility analysis or a statement that the regulatory flexibility analysis and/or rural area flexibility analysis will appear in the state register within thirty (30) days of the effective date of the emergency rule.

If, prior to the expiration of a rule adopted, 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.

### **New York Register**

### **New York Administrative Procedure Act**