

Rule Making in New York

- How to prepare SAPA notices for publication in the *State Register*
- How to file adopted rules for publication in the Official NYCRR

New York State
Department of State
Division of Administrative Rules

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RULE MAKING IN NEW YORK

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What should I know about this manual?

We have made every effort to establish and conform to a precise word scheme in this procedure manual. In every instance:

Must is used to denote a required action.

Should denotes an action recommended by the Department of State’s Division of Administrative Rules, but which is not required.

May is used for purely discretionary actions.

I/you refers to the person preparing the *Register* notice or performing the referenced task or activity.

We/us refers to your colleagues in the Department of State’s Division of Administrative Rules.

What acronyms should I know?

Unlike many rules, the rule making process itself has surprisingly few acronyms. You should be familiar with the following acronyms which are used throughout this manual:

Acronyms
✓ ARRC
✓ DAR
✓ GORR
✓ SAPA
✓ RIS
✓ RFA
✓ RAFA
✓ JIS

- **ARRC**, the Administrative Regulations Review Commission, performs Legislative Branch reviews of rule making activities.
- **DAR**, the Department of State’s Division of Administrative Rules.
- **GORR**, the Governor’s Office of Regulatory Reform, performs Executive Branch review of proposed rule makings.
- **SAPA**, the State Administrative Procedure Act, governs the rule making process in New York State. In signing a rule making notice, you certify that you have reviewed Article 2 of SAPA and the notice complies with all applicable provisions.

Nearly every proposal must include one or more of the following statements:

- **RIS**, a Regulatory Impact Statement;
- **RFA**, a Regulatory Flexibility Analysis (for Small Businesses and Local Governments);
- **RAFA**, a Rural Area Flexibility Analysis; and
- **JIS**, a Job Impact Statement.

Is there a quick way to locate rule making citations?

Appendix A Subject index

Yes. Appendix A is a subject index table of basic rule making information. It includes an alphabetic list of major activities and functions, the appropriate SAPA, Executive Law, Executive Order and NYCRR citation and a plain language overview of the topic.

The index is provided as a tool; it is not a substitute for actually reading the law. When you certify a *Register* notice you *certify* that you have, in fact, read and understand the mandates within SAPA and the Executive Law.

Are specific rule making forms required?

We provide rule making notice *forms* that contain all of the information you must address to ensure substantial compliance with SAPA regulations. We also provide *formats* for the accompanying statements that must be attached to notice forms, to help ensure that you address all required elements. You should refer to SAPA to make sure the content of each element is complete. Appendix B is a list of current rule making forms and formats which we amend as statutes or administrative needs require.

Appendix B ✓ Forms ✓ Formats

We supply pdf forms and formats on our website at <http://www.dos.state.ny.us/info/e-file/e-forms.html>.

Please Note: DAR now has an E-filing process for all rule makings. Instructions for completing forms and submitting to the West Data Capture system can be found on the Department of State website at the above address.

Office hours:

8:00 a.m. – 5:00 p.m., Monday-Friday

Are all rules alike?

No. SAPA distinguishes between rules and administrative guidance documents. This manual will help you through the rule making and publication process to add, amend or repeal rules defined in SAPA as §102(2)(a)(i) and (ii) rules.

Administrative guidance documents are exactly that — *guidance* documents. They do not have the full force and effect of law, and are not published in the NYCRR. See Chapter 8 regarding guidance documents.

Rules defined under subdivision (a)(i) are the type that implement or apply law, or which prescribe a fee charged by or paid to an agency or the procedure or practice requirements of an agency. Rules defined under subdivision (a)(ii) deal with rates, wages, security authorizations, etc.

The major *process* differences between the two types of rules is that proposals for (a)(i) rules are generally accompanied by an RIS, RFA, RAFA and JIS and expire 365 days after publication in the *State Register* (See Chapter 1 *How to Propose a Rule*), while (a)(ii) proposals do not expire and you are not required to submit an RIS, RFA, RAFA or JIS.

For rules not included see SAPA §102(2)(b).

Contact our Office of Council at (518) 474-6740 if you have any question about which process to use to adopt a particular type of rule.

What steps do I take to get a rule adopted?

SAPA establishes a three-step process for all rule making activities. To adopt a new rule, or to amend or repeal an existing rule, you must:

- 1) propose it through publication of a notice in the *State Register*;
- 2) receive and consider public comment; and
- 3) adopt the rule by filing the full text with us for incorporation into the NYCRR, along with a Notice of Adoption (again, for publication in the *State Register*).

Remember, state agencies bound by Executive Order 20 must obtain approval through GORR *before* submitting a proposal to us for publication in the *State Register*. Consensus rules are excepted.

What can I do if I need a rule to be effective right away?

In cases that warrant an expedited process, you may file a Notice of Emergency Adoption with us to make a rule effective for a maximum of 90 days from the date *filed* without proposing the rule for permanent adoption.

You cannot re-adopt the emergency (*i.e.*, file a second emergency) unless a corresponding Notice of Proposed Rule Making is submitted to initiate the process through which you will formally adopt the rule as a permanent rule (See Chapter 4, *How to Adopt an Emergency Rule*). Once you begin the proposal process, you may re-adopt an emergency, however, each such re-adoption will be effective for a maximum of 60 days, not 90 days.

Remember that in most cases GORR approval is necessary before the Notice of Proposed Rule Making may be submitted for publication in the *State Register*.

Does my rule require GORR approval?

Executive Order 20 requires all agencies subject to the Governor's executive control to submit all notices of proposed or revised (proposed) rule makings to GORR along with the *full* text of the rule and the *full* text of each accompanying statement *before* submitting your proposal to us for publication in the *State Register*. Consensus rules are not subject to this requirement.

See GORR's website (www.gorr.state.ny.us) for additional GORR rule making forms.

If you have any question about whether a rule requires GORR review, contact them directly at (518) 473-0620.

What criteria does GORR use to review rules?

Appendix C contains the criteria established in Executive Order 20 that GORR uses to evaluate rules. If GORR concludes that any review criteria is not met, they may require you to undertake additional analyses. These criteria and other information is contained in preface pages of each weekly *State Register*.

<p>Appendix C Rule review criteria</p>

Does GORR send rules to anyone else for review?

Yes. Once the information is complete, GORR submits it with a recommendation to the Secretary to the Governor, Counsel to the Governor, Deputy Secretary to the Governor and the Director of the Division of the Budget. In consultation with those individuals, GORR may: 1) authorize publication in the *State Register*; 2) prohibit you from proposing or revising (a previously proposed) rule; or 3) prohibit you from proposing or revising (a previously proposed) rule unless specified changes are incorporated.

Is a rule subject to GORR review after publication?

Yes. After publication of the proposed or revised (proposed) rule making notice, GORR again reviews the rule for any new information or factors. GORR notifies the agency of any deficiencies within established minimum comment periods (45 days for a proposal when full text is included or posted on a State website, 60 days after publication in the *State Register* when a summary is included and text is not posted on a State web site; 30 days for a revised proposal). The agency response is reviewed and, if adequate, they may proceed with the rule making. If the agency response is inadequate, GORR may notify the agency that it may not adopt the rule.

Where do I send rules for GORR review?

Submit completed pdf rule making form with required attachments to regs@gorr.state.ny.us. (See Appendix E for complete instructions.)

Specific filing instructions may be obtained from GORR by telephone at (518) 486-3292.

Chapter 1

HOW TO PROPOSE A RULE

Narrative overview. The rule making process is constructed around the fundamental belief that the people of this state have a right to participate in the development of its laws. Since administrative rules have the full force and effect of laws, New York — along with the federal government and nearly every other state and territory — adopted a systematic approach to ensure public comment during the proposal stage, before an agency rule is formally adopted. As a participatory democracy New York State provides the public the opportunity to comment on proposed laws *and rules*.

In New York, the weekly *State Register* provides public notice of pro-posed rule making activity. You must use the *Notice of Proposed Rule Making* form to initiate a rule making, and include the text of the rule, an RIS, RFA, RAFA and JIS (consensus rules excepting). You must obtain GORR authorization to submit a proposal if your agency is subject to the Governor’s executive control. The *Notice of Proposed Rule Making* must be used to add or repeal an entire new Part or even a small section to the NYCRR, to make a major or minor amendment to a rule, or to repeal an obsolete or invalid rule. Minimum public comment period is as required by SAPA, section 202(1)(a)(ii). Generally your proposal will expire in 365 days after publication or 365 days after the date of your last scheduled public hearing unless you take formal action to adopt the rule as explained more fully in Chapter 3. Proposals for “(a)(ii)” rules (rates, wages, security offerings, etc.) do not expire.

Based on the assessment of public comment, you may decide to change the text of a proposed rule. If you make *substantial* changes you must submit a second proposal, a *Notice of Revised Rule Making*, for publication in the *State Register*. This action opens an additional comment period and may include a revised RIS, RFA, RAFA or JIS if the change to the rule warrants a change to one or more of those statements. As with your original proposal, GORR review of a revised proposal is required.

If you believe that no person is likely to object to a rule because the rule would (a) merely repeal obsolete or outdated regulations, (b) implement or conform to non-discretionary statutory provisions, or (c) make technical corrections, you may propose it as a consensus rule. *A consensus is exempt from RIS, RFA and RAFA requirements and not subject to rule review by GORR*. However, a JIS or declaration is required. Even though GORR consent is not required prior to publication of a Notice of Proposed Rule Making for a consensus rule, it is good practice to consult with GORR prior to publishing such a notice. This is a good idea because any party, including GORR, may object to the adoption of a consensus rule. If an objection is received, the proposing agency must withdraw the rule and start the more complicated normal rule making process if it wishes to proceed with adoption of the rule.

What is the *State Register* publication schedule?

The *State Register* workweek begins each Wednesday morning; each issue takes two weeks to produce. We use the first week to review, log, compose, paginate, proof and revise each issue. Our printer has the second week to print, collate, bind, label and deliver that issue.

Deadline date + 15 days = issue date
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Every rule making notice filed in our office between a Wednesday and close of business (COB) the following Tuesday is published in the Rule Making section of the *State Register* that is printed, dated and mailed 15 days *after the deadline date* — always a Wednesday. For example, all notices received between Wednesday, January 7, 2009 and COB Tuesday, January 13, 2009 would appear 15 days later in the January 28, 2009 issue.

Note: for non-E-filed rule makings (<http://www.dos.state.ny.us/info/e-file/e-forms.html>) the deadline is noon on Tuesday.

The rule making calendar and production schedules can be found at: <http://www.dos.state.ny.us/info/calpromaster.html>

Hint! Schedule wisely. People talk about the *deadline day* so often that we tend to overlook the fact there is a *submission week*. Holidays aside, there are five working days on which you may submit your proposal for publication. If you have a known problem, call us early in the cycle to schedule a review or resolve the problem. If you call for assistance or submit material at the last minute and there is a problem, you run the risk of having publication delayed at least a week while the compliance issue is resolved. Also keep in mind that we have the authority to reject any rule that does not meet Executive Law, SAPA or Department of State requirements governing adoption.

How do I complete the proposal form?

(You must use the rule making forms on the Department of State website at: <http://www.dos.state.ny.us/info/e-file/e-forms.html>)

Please note: there is now a Notice of Proposed Rule Making (Rate Making) form for proposals that fall under SAPA 102(2)(a)(ii).

The *Notice of Proposed Rule Making* form asks for all of the information the law mandates to be published in the *State Register* and that we need for calendaring and administrative purposes; the items generally follow the order in which the material appears in the *State Register*.

We will remove information from agency responses which is redundant or too descriptive and will conform citation structure, if need be.

Click the drop down in upper right of form and pick your agency. Check appropriate box - obtained GORR approval or do not require GORR approval. Do not attach a copy of your GORR letter. These are sent to our office from GORR.

1. **A. Proposed action.** Click on the drop down. Pick the action that applies. Fill in the Parts and/or sections pertaining to that action. Fill in the Title number being amended. For more than one action use a separate line.
 - B. Consensus rule.** Only ✓ this box *and* attach a statement *setting forth the agency's determination that no person is likely to object to the rule as written* if you are proposing the rule as a consensus rule.
 - C. Previous consensus rule.** Only ✓ this box *and* attach a brief description of the objection if you previously proposed the rule as a consensus rule and then withdrew it following an objection during that proposal's comment period.
 - D. Review of Existing rules.** Only ✓ this box if you are proposing the rule pursuant to SAPA § 207(3), 5-year Review of Existing Rules.

- 2. Statutory authority under which the rule is proposed.** This item is a request for a legal *citation* of the statutory authority that authorizes or empowers your agency to propose the rule in question. It must be as specific as possible: cite to the subdivision and/or paragraph. It is not unusual for an agency to have authority under more than one statute and, in such cases, you must cite each statute.

CITATION FORMATS

Name of law, followed by sections and subdivisions; separate multiple laws with a semicolon:

- Public Health Law, section 1100
- Banking Law, section 14(1) and (4)(s); and Tax Law, section 1453(c)

with citation to a United States Code:

- Education Law, sections 102 and 303(1) and (2); and 26 USC, section 1397E
- Environmental Conservation Law, section 3-0301; and 55 USC, section 33(1)(b) and (c)

with citation to a chaptered law:

- General Business Law, sections 989 and 999; and L. 1999, ch. 70, section 55(a)
 - Civil Service Law, section 6(1); and L. 2000, ch. 4, section 10(1)(a) and (b)
-

- 3. Subject of the rule.** Make it short. There are limited characters in this field. Exactly what is typed here will populate the Register, Action Pending Index and Quarterly Index.

- 4. Purpose of the rule.** Every purpose should begin with the word, “To” and explain, *in the briefest way possible*, why the rule is needed or what the rule will accomplish. The purpose should tell the reader in one sentence what the text is about — without summarizing the entire text.

The purpose is the *goal* of the rule. Read in conjunction with the subject, the reader can instantly understand the functional area and basic nature of the rule making.

Once again, make it short. There are limited characters in this field also. Exactly what is typed here will populate the Register, Action Pending Index and Quarterly Index. If you need to elaborate you can do so in your statements.

- 5. Public hearings.** You must ✓ one of the boxes in Item 5 *and if a hearing is scheduled* you must specify the time, date (using the drop down calendar) and location. Mandated public hearings affect rule making schedules.

The answer to whether or not a public hearing is mandated is in your statutory authority. Some statutes contain a specific requirement that an agency conduct a public hearing(s) at the same time it grants the agency the authority to promulgate a rule.

You must differentiate on the *Notice of Proposed Rule Making* form between a public hearing scheduled as required by law and that which is purely optional on the part of your agency.

If your proposal is subject to a mandated public hearing, you cannot hold that hearing until *at least* 45 days after publication of the notice in the *State Register* unless a different time is specified in statute. Further, you must continue to accept public comments for an *additional five days* after the last scheduled public hearing is held. That means you cannot take any action to adopt the rule until at least the sixth day after the last scheduled, mandatory public hearing.

If you schedule public hearings, your proposal will expire 365 days after the last scheduled hearing instead of 365 days after publication of the *Notice of Proposed Rule Making* in the *State Register*.

If no public hearing is required or scheduled, you may skip Items 6 and 7 on the *Notice of Proposed Rule Making* form.

6&7. Interpreter services and Accessibility. Public hearings are conducted with all members of the public in mind. If you have scheduled a public hearing, you must complete Items 6 and 7 on the *Notice of Proposed Rule Making* form.

As Item 6 indicates, your agency must provide interpreter services to any hearing impaired persons. Every proposal that indicates a public hearing is to be conducted also contains a statement informing the public that such services will be made available, at no charge, upon written request to the agency.

Public hearings should be reasonably accessible to persons with a mobility impairment. If any location is not suitable for persons with a mobility impairment, you may submit an explanation for publication along with your proposal.

8. Terms (text) of the rule. You must ✓ one box to describe the text of the rule attached to the proposal. Remember, the *Notice of Proposed Rule Making* you submit to us is for *State Register* publication purposes only. If the full text is more than 2,000 words, you must create and attach a summary of the text in under 2,000 words. Nearly all word processing software provides a feature that will tell you exactly how many words are contained in a file.

If your rule is a “102(2)(a)(ii)” rule (rates, wages, security authorizations, etc.), you may attach a description of the subject, purpose and substance of the rule in lieu of the full text or summary.

Once a box is checked in this item a yellow paperclip will show up to the left. Click on the clip, navigate to where your text or summary is saved on your pc and attach it here. *Note:* All attachments must be in Word or WordPerfect - NOT pdf.

Note: If submitting a summary, the full text of the rule must be posted on a State website. If this is not possible, absent a waiver from the Office for Technology, the rule making will then be subject to a 60-day public comment period.

There are specific labeling conventions and typing requirements for text submitted to us for publication in the *State Register*. (See *How do I type text attachments?*)

9. Text contact. Item 9 identifies the individual in your agency from whom the text of the rule and attached statements may be obtained. Even if you publish the full text of a rule and statements, you must specify the name, department/agency, office address, telephone number and e-mail address of the agency contact person from whom the public may request a copy of those items.

10. Submission contact. *If different from the person named in Item 9,* specify the name, department/agency, office address, telephone number and e-mail address of the person to whom

public comments should be sent. If the same person named in Item 9 will accept comments, leave Item 10 blank.

- 11. Public comment will be received until . . .** The *minimum public comment period* is 45 days after publication of the *Notice of Proposed Rule Making* in the *State Register* when full text is included or posted on a state website, 60 days after publication in the *State Register* when a summary is included and text is not posted on a state website or 5 days after the last scheduled public hearing required by statute (unless a different time is specified in statute). That does not mean you cannot accept public comments after those minimum periods. In fact, a proposal does not expire until 365 days after being published or after the last scheduled public hearing, and agencies frequently accept comments for more than the minimums.

The purpose of this Item is to allow agencies to establish a specific deadline date for receipt of public comments somewhere between the end of the minimum comment period and the date of expiration. Generally it is expected that the date you provide will reflect an appropriate comment period for the rule in question. If you do specify a date other than the minimum time frame required, you must accept comment until that date; you cannot then take action to adopt the rule prior to the end of that longer, self-imposed comment period.

- 12. Prior emergency published.** This Item is self-explanatory. You must specify the publication date and ID number of the most recent emergency previously published in the *State Register* for the same action being proposed. (*See* Chapter 4 for an explanation of the emergency rule making process.)
- 13. Expiration date.** This Item is only applicable to proposals for rules defined as “102(2)(a)(ii)” rules (rates, wages, security authorizations, etc.), which do not expire after 365 days. The vast majority of state agency rules do expire after 365 days — you should only check this box if it applies to your rule.
- 14. Additional matter required by statute.** Some agencies have authorizing statutes that require additional information not specifically required by SAPA. Check the appropriate box. If yes, type in information.
- 15. Regulatory Agenda.** The Division of Housing and Community Renewal; Workers’ Compensation Board; and the departments of Agriculture and Markets, Banking, Education, Environmental Conservation, Health, Insurance, Labor, Motor Vehicles, State, and the offices of Children and Family Services and Temporary and Disability Assistance *and any other department specified by the Governor* must publish a Regulatory Agenda twice each year. (*See* SAPA 202-d)

Every agency required to publish a Regulatory Agenda is also required to complete Item 15. If your agency published an optional agenda you should also complete Item 15. (*See* Chapter 6, *How to Publish a Regulatory Agenda*)

Basically you ✓ one of four boxes to indicate the issue and year in which the (attached/proposed) action was published as a Regulatory Agenda item, or indicate that the action was not under consideration at the time your agency submitted a Regulatory Agenda.

16. Review of Existing Rules. (Item 1D applies) Pursuant to SAPA 207, unless the contrary is specifically provided by another law, any rule which is adopted on or after January 1, 1997 shall be reviewed after five years, and, thereafter, at five-year intervals.

If after review an agency determines that the rule should be modified, it shall publish a notice of Proposed Rule Making. The agency must include a reasoned justification for modification of the rule; an assessment of the public comments (submit a summary if over 2,000 words) that were submitted to the agency in response to the listing of the rule in the regulatory agenda, and where appropriate, include a statement of discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.

Note: If an agency determines that a rule 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 which were submitted to the agency in response to the listing of the rule in the regulatory agenda.

Check ✓ the applicable box(es). Attach applicable statement.

17. RIS — Regulatory Impact Statement. Most proposals must be accompanied by an RIS. SAPA allows you to create and reference a Consolidated RIS for a series of closely related and simultaneously proposed rules, or where a rule is virtually identical to rules proposed during the same year. There is no form *per se* for an RIS, but we do provide a format that lists every element required.

Under the “Needs and Benefits” section of the RIS you must identify and provide an abstract *not to exceed 500 words* for every study or data analysis your agency used to draft the proposed rule.

Normally the 2,000-word limit holds true for the text of an RIS, however; an RIS may be longer than 2,000 words when it includes an abstract. You may expand an RIS in 500-word increments for each analysis reported. For instance, an RIS with one abstract may be 2,500 words, one with two abstracts may be 3,000 words, etc.

Item 17 on the *Notice of Proposed Rule Making* form appears in three parts. Select a box in Part A to identify whether your attached RIS contains the full text, a summary or is a Consolidated RIS. If you are *not* including an RIS, you must check the appropriate box in Part B to identify why an RIS is not attached. There are three reasons *not* to attach an RIS to your proposal:

- 1) The rule is subject to a previously published Consolidated RIS. You must specify the ID number and issue date of the proposal that included the original Consolidated RIS.
- 2) The rule is exempt because it is defined as an “(a)(ii)” rule (rates, wages, security authorizations, etc.).
- 3) The rule is exempt because you are proposing it as a consensus rule making (*Item 1 must conform*).

Select Part C if you are claiming an exemption pursuant to SAPA §202-a and attach a statement to that effect.

After selecting an item in Part A, B or C, if a statement is required, a yellow paperclip will show up to the left. Click on the clip, navigate to where your RIS is saved on your pc and attach it here.

Note: All attachments must be in Word or WordPerfect - NOT pdf.

18. RFA — Regulatory Flexibility Analysis (for Small Businesses and Local Governments). The RFA requirements are very similar to those for the RIS. Item 18 is also separated into three parts.

You must select the appropriate box in Part A if you are attaching the full text, a summary or a Consolidated RFA.

You must select the box in Part B if you are claiming the rule will not impose any adverse economic impact and attach a statement explaining your finding and reasons upon which the finding was made.

You must select the appropriate box in Part C if the rule is subject to a previously published consolidated RFA or is exempt because it is an “(a)(ii)” rule or a consensus rule making.

After selecting an item in Part A, B or C, if a statement is required, a yellow paperclip will show up to the left. Click on the clip, navigate to where your RFA is saved on your pc and attach it here.

Note: All attachments must be in Word or WordPerfect - NOT pdf.

19. RAFA — Rural Area Flexibility Analysis. The RAFA requirements nearly replicate that of the RFA. If you claim an exemption because the rule will not impose any adverse economic impact on rural areas or reporting, recordkeeping or the compliance requirements on public or private entities in rural areas, you must attach a statement explaining your finding and reasons upon which the finding was made.

See Appendix A, rural areas, for the citation and a description of what constitutes a rural area for the purposes of the RAFA.

After selecting an item in Part A, B or C, if an attachment is required, a yellow paperclip will show up to the left. Click on the clip, navigate to where your RAFA is saved on your pc and attach it here.

Note: All attachments must be in Word or WordPerfect - NOT pdf.

20. JIS — Job Impact Statement. The requirements for a JIS differ from those of the RIS, RFA and RAFA. However, it follows much the same format, with Part A used to describe whether your attachment is the full text, a summary or a Consolidated JIS. The differences come in **Parts B and C.**

Part B

- 1) *(Somewhat similar to the RFA and RAFA)* The rule will not have a substantial adverse effect on jobs and employment opportunities, as apparent from its nature and purpose. In this case you must attach a statement that explains your finding. Except when it is readily apparent from the subject matter of the rule that it could *only* have a positive effect or no effect, the statement must include a summary of the information and methodology underlying your determination.
- 2) A JIS/Request for Assistance is attached in lieu of the JIS.

Part C

- 1) (*Same as RIS, RFA, RAFA*) The rule is subject to a previously published Consolidated JIS. You must specify the ID number and issue date of the proposal that included the original Consolidated JIS.
- 2) (*Same as RIS, RFA, RAFA*) The rule is exempt because it is defined under SAPA §102(2)(a)(ii) as a rate, wage, security authorization, etc.
- 3) The rule is submitted by the State Comptroller or Attorney General.

After selecting an item in Part A, B or C, if an attachment is required, a yellow paperclip will show up to the left. Click on the clip, navigate to where your JIS is saved on your pc and attach it here.

Note: All attachments must be in Word or WordPerfect - NOT pdf.

Agency Certification. Every *State Register* notice form ends with a certification to be completed by the person who *prepared* the form, not by the agency head or another designated party.



When you complete the certification, you are indicating that you have reviewed the form and the information is correct to the best of your knowledge. You also are certifying that you have reviewed appropriate SAPA and Department of State requirements and that the notice complies with all applicable provisions.

When you have completed the form, click on the Validate button in the upper right corner of the form (this button appears on every page; only click on one). A message will pop up indicating whether the form has verified ok or is deficient in some way. Make any needed corrections and validate again. Once the form verifies ok, save it. The form is now ready to be uploaded (E-filed) at the West Data Capture. Go to <http://www.dos.state.ny.us/info/e-file/submitpdf.html> and follow the instructions.

How do I type text attachments?

There are two basic concepts you should understand about typing the *text of a rule*. Further, *every* text attachment submitted to us for publication in the *State Register* — whether it is a rule or a statement, in full text or a summary — must be typed in a prescribed format.

First, your rule must include *visual instructions* to clearly show the reader what material is being deleted and what material is new, or being added. Visual instructions are created through bracketing words to be deleted (no strikethroughs) and underlining new material to be added. Detailed instructions may be found in the following section, *What is the prescribed format for text?*

Second, your rule must include *brief written instructions* to let the reader know what action you are taking (*i.e.*, an amendment, addition, repeal) and where in the text that occurs.

What is the prescribed format for text?

We have to scan and code all paper submissions and re-code all electronic submissions. To do this quickly, efficiently and accurately, we need you to prepare the text in a certain way.

One way to visualize the material you prepare for publication in the *State Register* is to think in terms of *manuscript preparation*. Manuscripts, like draft documents, do not show **boldface** text or

headers; they do not show an elaborate indent structure. For our purposes you must type double-spaced, unjustified text with a five-character indent for each new paragraph.

Only submit text being amended. Do not send a whole Part or section to amend only one section or subdivision. Including extra text opens the door for unintentional omissions/insertions being adopted.

When you review your text for content, you should also review it to ensure it conforms to our basic format requirements. We can, and will, reject material that is unreadable.

Probably the most common problem we see in text submissions is that some are formatted too well. Manuscript is plain — leave the coding to us. **All text must be formatted and printed out as shown below:**

- 1) Use plain, flat 8½" x 11" white paper. Bond and other textured papers can be the cause of broken letters.
- 2) Print out your original on a laser printer. You must submit the original printed document to us.
- 3) Set narrow margins with *one* indent (tab stop) set 5 characters from the left margin:
 - Top and bottom margins: 1"
 - Left and right margins: ½"
 - First and only tab stop: 5 characters from the left margin
- 4) Use a common proportional-space typeface in 10 or 12 point type. Serif fonts (*i.e.*, TIMES or New Times Roman, like this text) or sans serif (*i.e.*, Helvetica or Arial) are acceptable; avoid single-space typefaces (*i.e.*, Courier). Please remember:
 - *Never* use novelty typefaces like script or outline.
 - *Never* use **boldface** type for subheads or for emphasis.
 - *Never* use more than one typeface to create the text and attachments for a notice.
- 5) Double space all text.
- 6) Type your copy unjustified (*i.e.*, flush to the left and ragged right margins).

What written instructions should I use?

When you propose a new rule you may: 1. add a whole new Part, section, subdivision, paragraph, etc., to your existing rules. A NYCRR Part (even some sections and subdivisions) can be quite long. *Do not* underline page after page of new text. Instead, you should use language indicating “A new ___ is added to read as follows:” **or** 2. amend an existing section using brackets (deleted text) and underlining (new text).

See examples below:

HOW TO LABEL AND TYPE A LENGTHY NEW-TEXT INSERT

A new section 200.10 is added to read as follows:

Section 200.10. New rule text. This is an example of new text to be placed in one of the Titles of NYCRR. It is typed double-spaced with no type face changes. There is no underlined text indicating new text or brackets denoting text to be deleted.

Note: No underlining is needed, the written instruction notifies the reader that new text follows. This method should be used to type multi-page new Parts, subdivisions and sections (as in this illustration).

HOW TO LABEL AND TYPE AN AMENDMENT

Section 101.1(a) is amended to read as follows:

(a) Rule making forms and formats are [easy] fun to fill out and type.

Note: Label your action, bracket material to be deleted and underline new text using your computer's format feature.

How do I number new text additions?

Sometimes it's necessary to renumber existing rules to add text in the *right* sequence. For instance, if you want to add *nectarines* to an alpha list consisting of *oranges* and *pears*, you would not want to simply add nectarines to the end of the list. *You must always renumber existing items before you add a new item; i.e.,* renumber (a) and (b) to be (b) and (c) and then add a new (a). If you try to add first, you will find yourself with two subdivisions labeled (a) and it will not be clear to the reader exactly what you are doing.

It is unnecessary to type the text of a renumbered Part, section, subdivision, etc., *unless* you are also amending text in the item. It is also unnecessary to specify each section in a Part that is transferred to the new Part.

Warning. Be sure to update all internal cross-references when you renumber or repeal Parts, sections, subdivisions, etc.

HOW TO LABEL AND TYPE A NEW SECTION INSERT; NO AMENDMENT TO EXISTING TEXT

Sections 202.1 and 202.2 are renumbered sections 202.2 and 202.3, and a new section 202.1 is added to read as follows:

Section 202.1 State agencies should write rules in plain language.

HOW TO LABEL AND TYPE A NEW SUBDIVISION INSERT WITH A SIMPLE AMENDMENT

Subdivisions (e) and (f) of section 202.3 are renumbered subdivisions (f) and (g) and a new subdivision (e) is added to read as follows:

(e) It is getting really hard to come up with witty text examples.

Newly renumbered subdivision (g) is amended to read as follows:

(g) We reserve the right to [suggest improvements for] reject any submission.

HOW TO LABEL AND TYPE A WHOLE PART RENUMBERING; WITHOUT AMENDMENT

Part 200 is renumbered Part 145.

What do I type to repeal a rule?

You repeal a rule when you want to remove the entire text of an existing rule from the NYCRR. *Do not* bracket and retype an *entire* Part, section or subdivision being repealed. A simple statement of the action being taken is all that is necessary.

For example, Section 200.2(a) is repealed.

In this example, you will *not* type the full text of subdivision (a) in brackets. If there are three subdivisions — say (a), (b) and (c) — and you only want to repeal subdivision (a), you must renumber (b) and (c) as well. When you repeal and renumber you do the opposite of what you do when adding a new item. In these cases *you must repeal and then renumber*.

For example, Subdivision (a) is repealed, and subdivisions (b) and (c) are renumbered subdivisions (a) and (b). *Or, for a section*, Section 200.1 is repealed and sections 200.2–200.4 are renumbered to be sections 200.1–200.3. **Do not** bracket and retype the deleted text when an entire subdivision or section is being repealed.

Sometimes the sheer number of amendments in a Part or section make bracketing and underlining hard to follow. In those cases, it may be clearer to your readers if you repeal the entire Part, section or subdivision and replace it with new text.

For example, Section 200.2 is repealed and a new section 200.2 is adopted to read as follows: (*followed by the new text which should not be underlined.*)

How do I decide whether and when to amend a rule versus repeal-and-add new text?

Sometimes the number or nature of the changes are so dramatic and widespread that the only sensible way to show the proposed changes would be to repeal an entire Part and add a new Part. This is not always the case. If the changes to rules only affect one or two sections or subdivisions, repealing and adding an entire 50-section Part to amend 1 or 2 sections or subdivisions would make it difficult for people to locate the change. In addition, retyping the entire text of a lengthy Part to add one or two sections makes it more likely that unintended rule text changes will be adopted.

Retyping an entire Part when only amending one or two sections creates the appearance of implementing *all new rules* every year. It also creates a lot of unnecessary work, and blurs the historical continuity of your rules.

Examples.

Subdivisions (a) and (b) of section 30.1 are renumbered to be subdivisions (b) and (c). New subdivision (a) is added to section 30.1 to read as follows: (a) nuclear waste.

OR

Section 30.1 is amended to read as follows:

30.1 Workers shall not ingest the following nasty by-products:

(a) nuclear waste;

[(a)] (b) biochemical effluents; and

[(b)] (c) pond scum.

OR

Subdivisions (a)–(m) of section 30.1 are renumbered to be subdivisions (b)–(n). New subdivision (a) is added to section 30.1 to read as follows: (a) nuclear waste;

What do I put into a proposal package?

Since implementing the E-filing system, hard copy submission of a Notice of Proposed Rule Making is no longer necessary.

The *Notice of Proposed Rule Making* that you E-file (upload to the West Data Capture) for publication in the *State Register* contains the form and all necessary attachments. We do not publish the full text of a rule or any statement if it exceeds 2,000 words. In those cases you must submit a summary in under 2,000 words.

If you submit a summary for publication, you must have the full text versions completed by the time you submit your rule making proposal. The full text of all summarized items must be sent to what are commonly referred to as the “101-a and 202(6-a) officers.” (*See Where do I send my proposal?*)

Where do I send my proposal?

In addition to E-filing, you must also send each “202(6-a)” and “101-a” officer a copy of the notice along with the *full* text of the rule and the *full* text of every attachment and any other information required by Executive Law, section 101-a and SAPA, section 202(6-a). (*See Appendix D for a list of e-mail and mailing addresses and instructions.*)

Will I receive an acknowledgment?

Yes. You will receive two e-mail acknowledgments for each rule making. The first is an automatic acknowledgment sent from West Group Data Capture to the shared mailbox that each agency created for rule making. This is sent right after you upload (E-file) your notice. This e-mail is extremely important! It will confirm whether your E-filing submission succeeded or failed. DAR is not notified of E-filing failures.

The second e-mail acknowledgment comes from DAR after your notice is processed. It is e-mailed to the person who certified the rule making form. This acknowledgment includes the identification number assigned to your proposal and the NYCRR citation.

What does the *State Register* ID number mean?

We assign an alpha-numeric code to every notice. The ID number is comprised of a series of alpha and numeric characters that identify the agency, the issue of the *State Register* in which the notice was originally proposed, the year in which it was proposed, a serial number and finally, an alpha character or characters that explain the action being taken.

The volume number of the *State Register* changes each year and each calendar year the first issue published in January is numbered as issue one.

You must reference the ID number we assign to your proposal when and if you submit a revised proposal, emergency adoption, withdrawal or adoption.

RULE MAKING ID NUMBER				
<i>Agency Code</i>	<i>Issue Number</i>	<i>Year Published</i>	<i>Serial Number</i>	<i>Action Code*</i>
DOS	01	09	00001	P

Written as DOS-01-09-00001-P, this ID number identifies the item as a Department of State proposal published in the first issue of the year 2009 under that issue's unique serial number 00001.

* Action codes include:

P = Proposal

RP = Revised Proposal

W = Withdrawal

A = Adoption

E = Emergency Adoption

EP = combined actions: Emergency Adoption and Proposal

ERP = combined actions: Emergency Adoption and Revised Proposal

EA = a permanent emergency [will not expire in 90 days; special for certain §102(2)(a)(ii) rules]

Chapter 2

HOW TO REVISE OR WITHDRAW A PROPOSAL

Narrative overview. We previously stated that rule making is basically comprised of three steps — proposal, assessment of public comment and adoption. This was an obvious simplification. Situations change and things happen. If you need to make substantial revisions to the text of the rule as proposed, you must publish a revised proposal and open a second comment period before you can adopt the rule. In some cases you may actually need to withdraw a proposal from consideration entirely. This chapter explains how to revise and withdraw proposals.

We cannot accept a *Notice of Adoption* and the rule text certified by agency head after a proposal has expired. Therefore it is very important that you monitor the proposal expiration date and not allow it to expire inadvertently.

Whenever a proposed rule making expires, we publish a *Notice of Expiration* in the *Register* to serve as notice to the public that the proposal has expired and cannot be reconsidered unless a new proposal is published.

Revisions. If you substantially revise the text of the rule after it is proposed, you must submit a *Notice of Revised Rule Making* to open another comment period *before you adopt the rule*.

A revised rule making is a proposal and is subject to the same level of rule review from GORR as your original proposal. The minimum comment period for a revised proposal is 30 days. If the changes to the text affect the original RIS, RFA, RAFA or JIS you must submit a revised RIS, RFA, RAFA, or JIS, respectively.

- If you submit a *Notice of Revised Rule Making* within 90 days of the proposal expiration date, the notice itself will extend the final expiration an additional 90 days. You may seek this remedy only when the revised proposal is submitted within 90 days of the expiration date.

Withdrawals. Withdrawing a proposal is a very easy thing to do. You simply E-file a Notice of Withdrawal, identify the proposal and indicate the reason for withdrawal. You do not need to attach the text of the rule or any accompanying statements. You do not need to submit a hard copy.

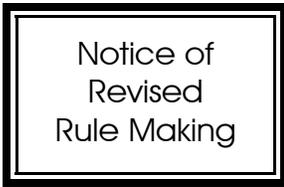
What is a substantial revision?

A substantial revision is any addition, deletion or other change in the text of a rule proposed for adoption which *materially alters its purpose, meaning or effect*. This does not include changes which merely define or clarify text. To determine if revised text is substantially revised, you must compare the rule as it is to be adopted against the text of the rule as most recently published.

You may make nonsubstantial changes to a proposed rule at the time you submit a *Notice of Adoption*. However, SAPA requires a *Notice of Revised Rule Making* to be filed where changes are substantial. If substantial revisions are made, the *Notice of Revised Rule Making* must be published at least 30 days prior to adopting the rule to provide a second public comment period with a minimum of 30 days.

Consult your agency counsel to determine whether changes constitute a substantial revision [also see *Motor Vehicle Manufacturers of the United States, Inc., v. Jorling*, 152 Misc.2d 405, 577 N.Y.S.2d 346 (1991)].

How do I revise a proposed rule making?



The *Notice of Revised Rule Making* form nearly replicates the *Notice of Proposed Rule Making* form. The obvious differences occur in Items 14-17 where you must specify if a *Revised* RIS, RFA, RAFA or JIS is attached, and in Item 18 which requires an Assessment of Public Comment received since the last (most recently) published proposal.

Do not forget that a revised rule making is a revised *proposal* and, as such, is subject to rule review by GORR.

1-4. Proposed action, statutory authority, subject and purpose of the rule. Use the exact language *published in the State Register* in the original *Notice of Proposed Rule Making* to complete these four items *except* when changes to the rule affect such language.

5. Terms of the rule. You must ✓ one box to let us know if you are attaching the full text of the revised rule, a summary of the revised rule or a description [as allowed for “(a)(ii)” rules, *i.e.*, rate makings]. Again, this notice is for publication purposes only — if the full text of a revised rule is more than 2,000 words you must submit a summary in under 2,000 words.

Once a box is checked in this item a yellow paperclip will show up to the left. Click on the clip, navigate to where your text or summary is saved on your pc and attach it here.

Note: All attachments must be in Word or WordPerfect - NOT pdf.

6-8. Public hearings, interpreter services and accessibility. The three public hearing questions replicate those on the original *Notice of Proposed Rule Making*.

9. Revised rule compared to proposed rule. Item 10 has three parts. In Section A you must provide the issue date (from the calendar drop down) in which the original proposal was published and the proposal’s ID number. Enter the ID number using lower-case letters. They will automatically capitalize after tabbing to the next field. In Section B you must list all previously published revised rule makings for the rule. In Section C you must identify the Parts, sections, subdivisions or paragraphs in which substantial revisions have been made since the rule was last (most recently) published.

10-11. Agency contacts. Items 11 and 12 are self-explanatory. If the same person named in Item 11 will accept comments, leave Item 12 blank.

12. Public comment will be received until . . . The *minimum public comment period* is 30 days after publication of the *Notice of Revised Rule Making* in the *State Register*. Again, that does not mean you cannot specify some later date between the end of the minimum comment period and the date of expiration.

13. Additional matter required by statute. Exactly as you did on the original proposal, ✓ check the appropriate box. Key in the appropriate information.

14-17. Revised RIS, RFA, RAFA or JIS. You must attach a *Revised* RIS, RFA, RAFA or JIS *only* if the changes you have made to the rule necessitate a revision to one of those statements.

Section A — If you are attaching a revised RIS, RFA, RAFA or JIS you must ✓ one box to let us know if your attachment is full text or a summary.

Section B — If you are attaching a statement explaining why a revised RIS, RFA, RAFA or JIS is not required you must ✓ one box to explain why not.

Note: A JIS is not required for the State Comptroller or Attorney General.

After selecting the appropriate box, a yellow paperclip will show up to the left. Click on the clip, navigate to where your statement is saved on your pc and attach it here.

Note: All attachments must be in Word or WordPerfect - NOT pdf.

18. Assessment of Public Comment. You must attach an assessment of public comment (that includes legislative comment) received since the proposal was published. As directed on the form itself, you do not have to reiterate a previously published assessment — you may address only those comments received since the last (most recently) published proposal.

Agency Certification. The Agency Certification should be completed by the person who prepared the form. You are indicating that you have reviewed the form and the information is correct to the best of your knowledge. You are also certifying that you have reviewed appropriate SAPA and Department of State requirements and that the notice complies with all applicable provisions.

When you have completed the form, click on the Validate button in the upper right corner of the form (this button appears on every page; only click on one). A message will pop up indicating whether the form has verified ok or is deficient in some way. Make any needed corrections and validate again. Once the form verifies ok, save it. The form is now ready to be uploaded (E-filed) at the West Data Capture. Go to <http://www.dos.state.ny.us/info/e-file/submitpdf.html> and follow the instructions.

Revised Rule Making Package. Since implementing the E-filing system, hard copy submission of a Notice of Revised Rule Making is no longer necessary.

How do I withdraw a proposed rule?



You must E-file a *Notice of Withdrawal* to formally remove the rule from consideration if you decide that you will take no action to adopt a proposed rule. If you do not take affirmative action to withdraw such a rule we will automatically publish a “Notice of Expiration” in the *State Register* when the proposal expires; meanwhile the proposal will remain as an active proposal in the weekly Action Pending Index.

The notice form is simple. You must only provide us with the issue date the proposal was published, the rule ID, original *Proposed Action* and *Subject* as published and the reason(s) for withdrawal of the notice, along with your contact information.

When you have completed the form click on the Validate button in the upper right corner of the form (this button appears on every page; only click on one). A message will pop up indicating if the form has verified ok or is deficient in some way. Make any needed corrections and validate again. Once the form

verifies ok, save it. The form is now ready to be uploaded (E-filed) at the West Data Capture. Go to <http://www.dos.state.ny.us/info/e-file/submitpdf.html> and follow the instructions.

Since implementing the E-filing system, hard copy submission of a Notice of Withdrawal is no longer necessary.

Chapter 3

HOW TO ADOPT A RULE

Narrative overview. For most state agencies, adoption occurs when the head of the agency approves and signs the rule in its final form. For some authorities, boards, commissions and public benefit corporations it may be necessary for the governing body to vote on the adoption. In those cases, adoption occurs when the proposal is approved by the requisite number of votes.

People regularly refer to the *adoption process* or a rule's *adoption*. That is why we call this chapter *How to Adopt a Rule* and why it is a *Notice of Adoption* that gets published in the *State Register*. The purpose of the notice is to inform the public that the agency has adopted the rule. Don't let the terminology confuse you. Just because a rule is adopted does *not* mean the rule is *effective*. Most rules are not effective and, perhaps more importantly, *not enforceable* until they are filed with the Secretary of State with a proper certification **and** the *Notice of Adoption* is published in the *State Register*. The major exceptions to this effective date restriction include emergency rules and rules that deal with rates, wages and security authorizations [*i.e.*, SAPA §102(2)(a)(ii) rules], which are effective upon filing (or for a future date specified in the certification).

Adopting a proposed rule requires two simultaneous actions. To amend NYCRR, you must file with us a certification attached to the full text of the rule with bracketing to show material being deleted and underlining to show new material being added. For publication in the *State Register*, you must simultaneously submit a *Notice of Adoption* with required attachments. **The *Notice of Adoption* must be FILED with us on or before the proposal's scheduled expiration date.**

We use the text attached to the certified filing to update the NYCRR. Eventually that original filing is transmitted to the State Archives for permanent retention. The NYCRR is supplemented semi-monthly. Every filing *received in our office* between the first and fifteenth of a month is published in the first supplement for that month; and every filing received between the 16th and the last day of a month is published in the second supplement of that month.

As described in Chapter 2, a proposal may either be adopted without change or adopted with nonsubstantial revisions. If you need to make substantial revisions to your proposal, you cannot adopt it without first publishing a *Notice of Revised Rule Making* to open another public comment period as described in Chapter 2. A proposal may also be withdrawn from consideration.

When you adopt a rule you must include an Assessment of Public Comment. If nonsubstantial revisions necessitate a change in any of the statements originally published with the proposal (RIS, RFA, etc.) you must submit a Revised RIS, Revised RFA, etc., with the notice form.

How do I adopt a rule?

To adopt a rule your agency head or the head of the authority or governing board (usually the chair or secretary) responsible for the rule making must sign a certification attached to the text of the rule.

Filing a Designation

Agency heads may designate another person to sign on their behalf. The designation must be made in writing signed by the agency head or the head of the authority or governing board and filed with the Department of State's Miscellaneous Records Bureau. The designation can be in the form of a letter from the head of the agency to the Secretary of State, or can be a more formal document if that is preferred.

The Miscellaneous Records Bureau operates under the Division of Corporations, State Records and Uniform Commercial Code. Designations should be addressed to:

Department of State
Miscellaneous Records Bureau
One Commerce Plaza, Suite 600
Albany, NY 12231-0001

You may hand deliver designations to Corporation's Customer Service Desk on the 6th Floor at One Commerce Plaza between the hours of 8:30 a.m. and 4:30 p.m., Monday-Friday.

What does a certification have to say?

There is no standard form for a certification — it may be on agency letterhead or on plain paper. The word "Certification" should be typed across the top of the page and it must contain specific types of information depending on the adopting body and the nature of the adoption, set forth in the order shown:

- 1) A statement certifying that the rule was duly adopted or other rule making action was duly taken.
- 2) The name of the agency head or designee authorized to take the action for the agency *or* the name of the authority, board, commission or public benefit corporation taking the action.
- 3) The date the action was taken (*i.e.*, the date of adoption) and the date to be effective.
- 4) In the case of an authority, board, commission or public benefit corporation *or* if the action is defined under SAPA §102(2)(a)(ii), the procedure by which the action was taken.
- 5) In the case of an authority, board, commission or public benefit corporation, the city in which the meeting took place at which the action was taken.
- 6) A citation of the statutory authority for the action taken.
- 7) If the action taken was *not* subject to SAPA or was otherwise not required to comply with the prior notice requirements, a statement to that effect and a citation of the statute providing for such exemption or noncompliance.
- 8) If the action was taken as an emergency measure under SAPA 202, a statement of the agency's finding of the need for such action and the specific reasons underlying such finding. The statement of reasons must set forth the specific facts or grounds supporting the finding made; a paraphrasing of the provisions of SAPA 202 re-lating to emergency measures is not acceptable.

The agency may submit a separate statement of the findings and specific reasons underlying them together with the certification. In that case, however, a statement signed by the agency head certifying that these were the findings made must form part of that separate statement.

- 9) In all instances where the action taken is subject to SAPA (except as indicated above in Items 7-8), the date of publication of the *Notice of Proposed Rule Making* in the *State Register* and either the date(s) and manner of publication of any other prior notice required by statute or, if none, a statement to the effect that no other publication of a prior notice of the action being taken was required by statute.

SAMPLE CERTIFICATION BY STATE AGENCY HEAD

CERTIFICATION

I hereby certify that the attached amendment to Part ___ of Title ___ of the Official Compilation of Codes, Rules and Regulations of the State of New York was duly adopted by me, (*name, title of agency head*), on (*date of adoption*) pursuant to authority vested in the (*name of agency*) by _____ Law, section ____ . This amendment shall be effective (*specify date, time frame OR "upon publication of a Notice of Adoption in the State Register"*).

The notice of proposed rule making for this amendment was published in the State Register on (*date*) under ID No. _____. No other publication of prior notice was required by statute.¹

(*Date*)

(*Name - typed out*)

(*Title*)

(*Signature*)

* * *

SAMPLE CERTIFICATION BY STATE AGENCY DESIGNEE

CERTIFICATION

I, (*name, title of designee*), having been duly authorized in writing filed with the New York State Department of State, hereby certify that the attached amendment to Part ___ of Title ___ of the Official Compilation of Codes, Rules and Regulations of the State of New York was duly adopted by me, on (*date of adoption*) pursuant to authority vested in the (*name of agency*) by _____ Law, section ____ . This amendment shall be effective (*specify date, time frame OR "upon publication of a Notice of Adoption in the State Register"*).

The notice of proposed rule making for these amendments was published in the State Register on (*date*) under ID No. _____. No other publication of prior notice was required by statute.¹

(*Date*)

(*Name - typed out*)

(*Title*)

(*Signature*)

* * *

ADDITIONAL PARAGRAPHS (2 AND 3) FOR EMERGENCY ADOPTION ²

I determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. (*In this case, delete reference to effective date that ends paragraph 1 shown above in standard certifications.*)

This amendment is adopted as an emergency measure because time is of the essence. (*State the agency's finding of the need for emergency action and the specific reasons underlying such finding. Do NOT paraphrase SAPA §202 or the finding will not be acceptable.*)

¹ IF OTHER PRIOR NOTICE WAS REQUIRED BY STATUTE, ENDING SENTENCE SHOULD READ:

As required by statute, additional prior notice was published on (*date/s*) in (*manner of publication; e.g., magazine/s, newspaper/s, agency bulletin/s, agency website, etc.*).

² You may submit a separate statement of the findings and specific reasons underlying those findings provided that a statement signed by the agency head certifying that these were the findings made forms a part of such separate statement.

**SAMPLE CERTIFICATION BY AUTHORITY, BOARD, COMMISSION OR PUBLIC
BENEFIT CORPORATION
(CHAIRPERSON OR SECRETARY)**

C E R T I F I C A T I O N

I, *(name, title of authorized entity official)*, having been duly authorized in writing filed with the New York State Department of State, hereby certify that the attached amendment to Part ___ of Title ___ of the Official Compilation of Codes, Rules and Regulations of the State of New York was duly adopted on *(date of adoption)* pursuant to authority vested in the *(Name of entity)* by _____ Law, section ___, by the unanimous vote of the (members) (commissioners) present at a meeting held in *(city)*, New York, on *(date)*. This rule shall be effective *(specify date, time frame OR "upon publication of a Notice of Adoption in the State Register")*.

The notice of proposed rule making for these amendments was published in the State Register on *(date)* under ID No. _____. No other publication of prior notice was required by statute.¹

(Date)
(Name - typed out)
(Title)
(Signature)

* * *

**ADDITIONAL PARAGRAPHS (2 AND 3) FOR EMERGENCY ADOPTION ²
BY AN AUTHORITY, BOARD, COMMISSION OR PUBLIC BENEFIT CORPORATION**

The (members)(commissioners) further determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. *(In this case, delete reference to effective date that ends paragraph 1 shown above.)*

This amendment is adopted as an emergency measure because time is of the essence. *(State the entity's finding of the need for emergency action and the specific reasons underlying such finding. Do NOT paraphrase SAPA §202 or the finding will not be acceptable.)*

¹ IF OTHER PRIOR NOTICE WAS REQUIRED BY STATUTE, ENDING SENTENCE SHOULD READ:

As required by statute, additional prior notice was published on *(date/s)* in *(manner of publication; e.g., magazine/s, newspaper/s, agency bulletin, agency website, etc.)*.

² You may submit a separate statement of the findings and specific reasons underlying those findings provided that a statement signed by the authorized entity head certifying that these were the findings made forms a part of such separate statement.

How do I complete the adoption form?

(You must use the rule making forms on the Department of State website at: <http://www.dos.state.ny.us/info/e-file/e-forms.html>)



The *Notice of Adoption* form asks for all of the information the law mandates to be published in the *State Register* and that we need for calendaring and administrative purposes; the items generally follow the order in which the material appears in the *State Register*.

1. **Action taken.** This should be a reiteration of the “Proposed action” from your original *Notice of Proposed Rule Making* or the modified version published with a *Notice of Revised Rule Making*. Enter a *short* statement to tell the reader whether the action adds, amends, renumbers or repeals the rule and specify which rule (e.g., Part, section or subdivision of Title __ NYCRR).
2. **Effective date of rule.** You must specify an effective date for the newly adopted rule. Largely self-explanatory, this section allows you to simply a box and, if needed, specify an effective date.
- 3-5. **Statutory authority, subject and purpose.** Use the exact language *published in the State Register* in the original *Notice of Proposed Rule Making* to complete these four items *except* when changes to the rule affect such language.
6. **Terms (text) and identification of rule.** There are three sections to Item 6:
 - A. Identify the I.D. No. of the **original notice of proposed** or emergency/proposed rule making. Do not use caps when typing the ID No. It will automatically cap when you tab to the next field.
 - B. the first box only if *no* changes were made to the text of the rule as proposed. You should not attach the text of the rule or any accompanying statement that has not changed since previously published. However, if one of the statements needs to be revised you must complete the appropriate item and attach the revised statement.

If you made nonsubstantial changes to the rule as previously published, you must the second box, identify the location of those changes and attach a copy of the text as adopted (*i.e.*, if you originally submitted full text you must attach the full text of the rule as adopted; if you originally submitted a summary you must attach a summary). In this case you must complete Items 9-12 and either attach a revised statement or an explanation as to why a revised statement is not attached.

Note: You will need to submit a hard copy of your original certification attached to the text plus 2 copies (3 total) for publication in the NYCRR whether or not text or substance is submitted for publication in the *State Register*. Hard copies must be received in DAR the same day you e-file!
 - C. As requested on the form, enter the publication date and ID number of any previously published notice(s) of **revised** rule making.

7. Agency contact. Item 7 is self-explanatory.

8. Additional matter required by statute. Exactly as you did on the original proposal, you must ✓ the appropriate box. If yes, type in the required information.

9-12. Revised RIS, RFA, RAFA or JIS. If you ✓ the first box in Item 6 to indicate that no changes were made to the text of the rule as proposed *and* all previously published RIS, RFA, RAFA and JIS statements remain adequate, you may skip Items 9-12. However, if any statement is inadequate or requires correction you must complete the appropriate Item (9, 10, 11 or 12).

Section A — If you are attaching a revised RIS, RFA, RAFA or JIS you must ✓ one box to let us know if your attachment is full text or a summary.

Section B — If the text of the rule changed and a **statement is attached** explaining why a revised RIS, RFA, RAFA or JIS is not required you must ✓ one box to explain why not.

Section C — If you do not have to attach a statement because your rule is a “rate making” [SAPA §102(2)(a)(ii)] ✓ this box.

Note: A JIS is not required for the State Comptroller or Attorney General.

When you type a *Revised* RIS, RFA, RAFA or JIS, please remember to use the word “Revised” in the heading (e.g., Revised Regulatory Impact Statement).

13. Assessment of Public Comment. You must attach an assessment of public comment (that includes legislative comment) received since the proposal was published. As directed on the form itself, you do not have to reiterate a previously published assessment — you may address only those comments received since the last (most recently) published proposal.

14. Referenced material. ✓ the first box if the rule does *not* include material incorporated by reference; ✓ the second box if there is incorporation by reference material and indicate where in the text the reference(s) are located. *See Chapter 5, How to Incorporate by Reference.*

Agency Certification. The Agency Certification should be completed by the person who prepared the form. You are indicating that you have reviewed the form and the information is correct to the best of your knowledge. You are also certifying that you have reviewed appropriate SAPA and Department of State requirements and that the notice complies with all applicable provisions.

Adoption Package. Remember that an adoption is two separate actions. Both actions need to occur on the same day.

- 1. For publication in NYCRR:** Hard copy original certification with full text of rule attached. *Submit original and two copies.*
- 2. For publication in the State Register:** E-file the form. No hard copies of the form and attachments are needed. DAR will print the form and any attachments from the E-filing.

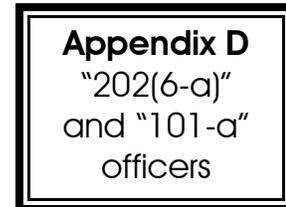
Where do I deliver my adoption?

Deliver the hard copy certification with original signature attached to the text of the rule plus two copies to DAR on the same day you e-file to:

Department of State
One Commerce Plaza
99 Washington Ave., Suite 650
Albany, NY 12231-0001

Our office hours are 8:00 a.m. to 5:00 p.m., Monday-Friday.

At the same time you file an adoption with us, you must also send each “202(6-a)” and “101-a” officer a copy of the notice along with the *full* text of the rule and the *full* text of every attachment and any other information required by Executive Law, section 101-a and SAPA, section 202(6-a). (See Appendix D for a list of e-mail and mailing addresses and complete instructions.)



Will I receive an acknowledgment?

Yes. You will receive two e-mail acknowledgments for each rule making. The first is an automatic acknowledgment sent from West Group Data Capture to the shared mailbox that each agency created for rule making. This is sent right after you upload (E-file) your notice. This e-mail is extremely important! It will confirm whether your E-filing submission succeeded or failed. DAR is not notified of E-filing failures.

The second e-mail acknowledgment comes from DAR after your notice is processed. It is e-mailed to the person who certified the rule making form. This acknowledgment includes the identification number assigned to your adoption and the NYCRR citation.

Can I change a newly adopted rule?

Maybe. After a rule is filed and before its effective date, you may amend, suspend or repeal a rule in situations where such action does not constitute a substantial revision to the rule [SAPA §203(2)].

Most rules are marked to become effective upon publication of a *Notice of Adoption* in the *State Register* rather than on some specified, future date. In such a case, you have a limited amount of time to submit an *Amended Notice of Adoption*. Remember, once a rule is effective you must initiate a new proposal process to amend it in any way.

You must E-file the *Amended Notice of Adoption* form with us and notify (*i.e.*, copy) the “202(6-a)” and “101-a” officers if you amend a newly adopted rule.

How do I complete the Amended Adoption Form?

The Amended Notice of Adoption form is essentially the same as the Notice of Adoption form with the exception of items 2 and 3.

- 2. Rule Identification.** Provide the date in which the adopted rule was filed with the Department of State, the one to four-digit file number that was assigned by the Department of

State and the intended effective date. Provide the date that the Notice of Adoption was published in the *State Register* and the I.D. Number.

- 3. Proposal Identification.** Provide the date that the original Notice of Proposed Rule Making was published in the *State Register*.

Amended Adoption Package:

Amended Adoptions are packaged the same as Adoptions. Hard copy certification with original signature attached to the text of the rule plus 2 copies needs to be delivered to DAR the same day the Amended Adoption is E-filed. An Assessment of Public Comment would be included **only** if additional comment was received after the Notice of Adoption was filed with the Department of State.

Chapter 4

HOW TO ADOPT AN EMERGENCY RULE

Narrative overview. Nearly every state with a formal rule making process provides for some form of expedited or temporary rule making. In New York we refer to this as emergency rule making.

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 the proposal process *would be contrary to the public interest*, the agency may dispense with all or part of the proposal requirements and adopt a rule on an emergency basis.

New York's emergency rule making process allows you to adopt a rule on a temporary basis for a maximum of 90 days. An emergency may be re-adopted, but each such re-adoption will be effective for a maximum of 60 days and to file a re-adoption you must also take action to initiate the proposal process to formally adopt the rule on a permanent basis. Emergency rules may be effective on the date filed with the Department of State or on a future date specified in the certification.

For most state agencies, emergency adoption occurs when the head of the agency approves and signs the rule in its final form. For some authorities, boards, commissions and public benefit corporations, it may be necessary for the governing body to vote on the emergency adoption. In those cases, adoption occurs when the emergency adoption is approved by the requisite number of votes.

Since an emergency will expire in 90 days and cannot be re-adopted unless a *Notice of Proposed Rule Making* is submitted, we provide two notice forms that you may choose from:

- The *Notice of Emergency Adoption* is used to simply adopt the rule on an emergency basis.
- The *Notice of Emergency Adoption and Proposed Rule Making* form combines the two separate actions and allows you to adopt the rule on an emergency basis at the same time you initiate the proposal process.

If your agency is subject to GORR rule review, you must obtain their approval to submit a *Notice of Emergency Adoption and Proposed Rule Making* form.

As with a regular adoption, the act of emergency adoption requires two simultaneous actions. You must deliver to DAR a certification attached to the full text of the rule with bracketing and underlining to show amendments the same day you E-file the *Notice of Emergency Adoption* or *Notice of Emergency Adoption and Proposed Rule Making* form for publication in the *State Register*.

If you use the *Notice of Emergency Adoption and Proposed Rule Making* form, the proposal part of the notice is subject to the same requirements and calendaring issues as any other proposal. During the course of the proposal period you may find it necessary to submit a *Notice of Revised Rule Making*. We provide variations of all of these forms to allow you to adopt or re-adopt an emergency at the same time you revise a proposal. For example, a *Notice of Emergency Adoption and Revised Rule Making* form should be used to adopt or re-adopt an emergency for a rule when it is necessary to make substantial revisions to the original proposal at the same time you publish notice that the text of the proposal has been substantially revised.

How do I adopt a rule on an emergency basis?

Emergency Rules

You must file a hard copy certification with the text of the rule and E-file a *Notice of Emergency Adoption* or a *Notice of Emergency Adoption and Proposed Rule Making* form with all applicable attachments to adopt a rule on a temporary basis (the rule will expire in a maximum of 90 days).

For samples and special instructions for emergency certifications, refer to Chapter 3, *How to Adopt a Rule*.

Can I continue an emergency rule?

Emergency rules may be *re-adopted*, not continued. It is important to note, however, that you must submit a *Notice of Proposed Rule Making* to formally propose the rule for permanent adoption *before* taking any action to re-adopt an emergency rule. If your rule requires GORR authorization, you must obtain their authorization before the emergency rule can be adopted.

First emergency effective for 90 days;
Second or subsequent effective for 60 days

This requirement to have a proposal before you re-adopt an emergency is why so many agencies use the *Notice of Emergency Adoption and Proposed Rule Making* form. This form provides the opportunity to file the emergency at the same time you initiate the proposal process.

Can I revise a proposal after adopting the rule as an emergency?

Yes. You may submit a *Notice of Revised Rule Making* for any proposal. To do this at the same time you adopt or re-adopt an emergency, use the *Notice of Emergency Adoption and Revised Rule Making* form.

Can I withdraw an emergency adoption?

No. An emergency adoption is temporary and will expire, but it is still an adopted, effective rule. You may not withdraw an emergency as if it were a proposal. If a situation changes and you need to withdraw the text of an emergency you must either wait until the emergency rule expires or adopt a new emergency rule to supercede the previous one.

What do I file for an emergency rule making?

What you file for an emergency rule making depends on whether you are filing the emergency as a single action or in combination with a proposal. Remember that an adoption itself requires two separate yet simultaneous actions (filing the certification and E-filing a notice for publication in the *State Register*). If you choose to propose the rule at the same time, use the *Notice of Emergency Adoption and Proposed Rule Making* form to combine the adoption and proposal notifications.

Emergency Adoption Package (same as Adoption package):

1. **For publication in NYCRR:** Hard copy original certification with explanation of emergency and full text of rule attached. *Submit original and two copies.*
2. **For publication in the State Register:**

- E-file your *Notice of Emergency Adoption* OR *Notice of Emergency Adoption and Proposed Rule Making* form.
- No hard copies of form and attachments are needed. DAR will print all from the E-filing. Delivery of hard copy certification with text and E-filing of rule making form need to occur **on the same day**.

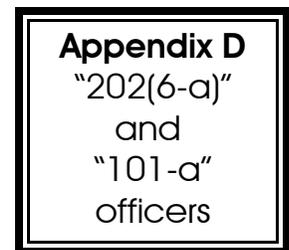
Where do I deliver my emergency?

Deliver the hard copy certification with original signature attached to the text of the rule plus two copies to DAR **on the same day you e-file** to:

Department of State
 One Commerce Plaza
 99 Washington Ave., Suite 650
 Albany, NY 12231-0001

Our office hours are 8:00 a.m. to 5:00 p.m., Monday-Friday.

At the same time you file an emergency adoption with us, you must also send each “Exec. L. 101-a” and “SAPA 202(6a)” officers a copy of the notice along with the *full* text of the rule and the *full* text of every attachment. (See Appendix D for a list of e-mail and mailing addresses and instructions.)



Will I receive an acknowledgment?

Yes. You will receive two e-mail acknowledgments for each rule making. The first is an automatic acknowledgment sent from West Group Data Capture to the shared mailbox that each agency created for rule making. This is sent right after you upload (E-file) your notice. This e-mail is extremely important! It will confirm whether your E-filing submission succeeded or failed. DAR is not notified of E-filing failures.

The second e-mail acknowledgment comes from DAR after your notice is processed. It is e-mailed to the person who certified the rule making form. This acknowledgment includes the identification number assigned to your emergency adoption or emergency/proposal and the NYCRR citation.

Can I change a newly adopted emergency rule?

You may only amend, suspend or repeal a newly adopted rule in situations where such action does not constitute a substantial revision to the rule so long as you do so before the rule becomes effective.

Theoretically it is possible to amend, suspend or repeal an emergency adoption — but only in the unlikely case the emergency were to specify a future, effective date and you file a *Notice of Amended Adoption* before that date. The vast majority of emergency rules are effective the day they are filed with us and, obviously, cannot be amended, suspended or repealed.

Chapter 5

HOW TO INCORPORATE BY REFERENCE

Narrative overview. Occasionally you might want to include federal material or other previously published standards in a rule. Rather than restate the text of the material in the rule itself, you may incorporate it by reference so long as you conform to precise identification and filing requirements.

The incorporation by reference requirements in effect today came about following a 1983 ruling from the NYS Court of Appeals. That ruling stated that a state agency could not enforce material that had been incorporated by reference unless the material had been filed with the Department of State as required by the NYS Constitution, Article IV, section 8. See *NYS Coalition of Public Employers v. NYS Department of Labor*, 60 N.Y. 2d 789, 469 N.Y.S. 2d 679 (1983).

Section 102 of the Executive Law permits state agencies to continue referencing outside publications as long as the publication is precisely identified in the NYCRR and filed with the Department of State. When the outside previously incorporated by reference materials are amended, and the agency wishes to incorporate the amendments in NYCRR, it must commence a Notice of Proposed Rule Making to incorporate the changes. To ensure that the publication is available to regulated parties, copies must be available for public use and inspection at designated agency offices as well as at the Department of State, the Legislative Library and 13 designated Supreme Court law libraries.

Adopting a referenced publication presumably makes the publication a public document and, as such, it must be copied and distributed upon request. To avoid any claim of copyright infringement, the Department of State requires a certification that a referenced publication can be copied and distributed to the public without violating copyrights.

When do I provide copies of the publications I intend to incorporate by reference?

Do *not* submit the required two copies of the referenced documents to the Department of State until you formally adopt the rule. Do not submit the required copy to the Legislative Library or Supreme Court law libraries until the rule is **adopted**.

You must provide copies of material to be incorporated to GORR for rule review along with your proposal if your agency's rule making activity is subject to executive review. The text of referenced material must, however, be included in the Exec. L. 101-a and SAPA 202(6-a) notice to officers (*see* Appendix E). Since the referenced text is part of the proposed rule, it must also be available to those who request a copy for public comment. For these purposes an agency may provide photocopies in lieu of an original publication.

What information is required to be in the rule?

Pursuant to Executive Law, section 102(1)(c) you **must include in the text of the rule** an accurate and complete description of every publication you incorporate by reference. You must state in the text of the rule that requires adherence to the standards published in an incorporated document, the following items:

- title or name of the publication;

<p>Incorporation by reference</p> <p>Identification requirements</p> <p>Exec. L. §102(1)(c)</p>
--

- edition or volume title or number (if applicable);
- name of the author or editor;
- name and address (if any) of the publisher;
- date of publication; and
- location (agency address) where the publication may be viewed. You may also list the Department of State’s address as a source for viewing these materials in Albany.

Does the text of incorporated material “count” for the 2,000-word publication limit?

No. Referenced material is not counted when determining whether or not the text of a proposal or adoption is 2,000 words or more. A summary of the text must be submitted for publication in the *State Register* only if the text of the rule is 2,000 words or more *excluding* referenced material.

Can I reference previously filed publications?

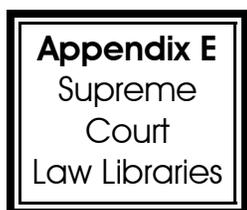
Yes. If your agency or another agency has already filed a publication you will not have to file additional copies so long as the rule (as submitted for filing) is accompanied by a statement precisely identifying the previously filed publication, including our file number and the date the publication was filed. If you file a rule referencing a document previously filed by another agency, the accompanying statement must include the name of the filing agency in addition to the file number and date the publication was filed. This is referred to as a “reref.”

Call us at (518) 473-6090 if you wish to verify that a particular document is on file or to obtain a current copy of our incorporation by reference library list.

Be very careful in citing incorporation by reference materials. In the case of an inaccurate citation, we may have to certify that we have no record of the publication being on file. Searches and certifications are commonly requested pursuant to Article 45 of the Civil Practice Law and Rules of the State of New York.

How do I prepare publications for filing?

You must file two copies of the original bound publication with the Department of State and one copy with each of 13 designated Supreme Court law libraries (see Appendix E for a list of addresses). The material submitted to the Supreme Court Libraries must be in electronic form or in the form of microfiche or ultrafiche cards and must meet the requirements of 22 NYCRR 123.



Certain paper reproductions are acceptable in filing documents with the Department of State. Specifically, *Federal Register* and *Code of Federal Regulations* materials may be downloaded from the National Archives and Records Administration official website and then copied, bound, labeled and filed as incorporation by reference documents.

If the material was published in a permanently bound volume, you must provide us with two copies of that volume when you adopt the rule. If the material is soft-bound and under 100 pages or self-covered (*i.e.*, the pages and cover consist of the same or similar paper), you must place one copy in a

rigid-cover binder. Ring binders (such as standard three-ring binders) are not acceptable as rigid cover binders. Instead you must use pin-and-prong binders, post binders or other similar types of binders that hold the publication compactly and securely.

**Incorporation
by reference**
Labeling
requirements

Material published in loose-leaf, like the NYCRR, may be filed in a binder so long as that binder is specifically manufactured and imprinted by the publisher for storing the pages. You must affix an adhesive label in the upper-left corner of the front cover of every publication you file with us. The label must be clearly printed or typed and include the name of the publication, edition or volume number and title (if applicable), author (or editor) and date of publication.

Is there a form to submit documents?

Yes. We provide an *Incorporation by Reference Certification* form that must be completed by the agency's general counsel for **each** publication incorporated by reference. The Incorporation by Reference Certification form can be found on our website at <http://www.dos.state.ny.us/info/e-file/e-forms.html>.

When planning to adopt a referenced publication you must consider whether or not the material is protected by copyright. Adopting a referenced publication presumably makes it a public document. As such, it must be copied and distributed upon request — both by your agency and the Department of State. To avoid any claim of copyright infringement, the Department of State requires a certification that the referenced publication can be copied and distributed to the public without violating copyrights.

INFORMATION REQUIRED ON AN INCORPORATION BY REFERENCE CERTIFICATION

(Form provided by the Department of State, Division of Administrative Rules)

1. I, the undersigned General Counsel for the (*Agency Name*), hereby state that said agency has adopted the following material:
 - Publication Title*
 - Volume Number*
 - Volume Title*
 - Section or pages*
 - Author*
 - Publication Date*
 - Publisher's Name/Address*
 - Electronic location or other source identification*
 2. The attached material is referenced in Title ___ NYCRR, sections _____
 3. Based on the following facts, it is my opinion that the referenced publication is reasonably available to regulated parties as required by Executive Law §102(1)(c):
 4. Based on the following facts, it is my opinion that reproduction and distribution of all or part of the referenced material will not violate any copyright:
 5. The original publication is being submitted to the Department of State.
 A paper reproduction of the referenced material is being submitted to the Department of State and I, the undersigned General Counsel, hereby certify that I have personally supervised the comparison of the attached document with the original publication and the attached is a true and accurate representation of the publication.
- General Counsel's Signature*
Name
Title
Agency
Date

Chapter 6

HOW TO PUBLISH A REGULATORY AGENDA

Narrative overview. Regulatory Agendas reinforce the concept that SAPA is all about public notice and public input into the rule making process. A Regulatory Agenda gives you the opportunity to solicit comments *before* you draft a formal *Notice of Proposed Rule Making*.

Failure to include a specific rule in a Regulatory Agenda does not mean that a proposal for that rule cannot be made in the future. However, if an agency that is mandated to publish a Regulatory Agenda does submit a proposal for a rule that was not previously published in its Regulatory Agenda, it must 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. An agency is not required to propose a rule which appears in its Regulatory Agenda.

Do I have to publish a Regulatory Agenda?

The Division of Housing and Community Renewal; Workers' Compensation Board; departments of Agriculture and Markets, Banking, Education, Environmental Conservation, Health, Insurance, Labor, Motor Vehicles and State; and the offices of Children and Family Services, and Temporary and Disability Assistance must publish semi-annual Regulatory Agendas in the *State Register*. An agency specified by the Governor or the Governor's designee may be required to publish a Regulatory Agenda.

Any agency may publish a Regulatory Agenda at its discretion. The publication deadlines and information required to be provided in a discretionary Regulatory Agenda are the same as those for a mandated Regulatory Agenda.

Publication Requirements. Agencies which publish a Regulatory Agenda shall publish the Regulatory Agenda on their respective websites whenever feasible. An agency that publishes its Regulatory Agenda on its website shall have the option of maintaining a continuously updated Regulatory Agenda, wherein a description of a rule is added when the agency begins to consider proposing it and is removed when the agency is no longer considering proposing it. Such description shall identify the date on which the description is first listed in the Regulatory Agenda and conspicuously indicate that the description has been newly listed for a period of not less than 30 days after such date. In any year that an agency maintains a continuously updated Regulatory Agenda, it shall not be required to publish a Regulatory Agenda in the last regular issue of the *State Register* in June. The Regulatory Agendas of such agencies published in January shall inform the public that these agencies maintain updated Regulatory Agendas on their websites and list the addresses of these websites. The information concerning continuously updated Regulatory Agendas must be republished in the last regular issue of the *State Register* in June.

What is required to be in a Regulatory Agenda?

Every Regulatory Agenda must include a list and brief description of the subject matter of all rules being considered for rule making. You must provide the name, public office, address and telephone number (and may provide an e-mail address) of the agency representative who is knowledgeable about the rule making, from whom information about the rule making may be obtained, and to whom comments may be addressed. You must also identify each rule described in the Regulatory Agenda for which a Regulatory Flexibility Analysis or Rural Area Flexibility Analysis may be required, and

provide outreach to potentially affected small businesses, local governments, and/or public or private interest located in rural areas for these rules.

Regulatory Agenda text must be typed in the prescribed format in a Word or WordPerfect document and e-mailed to NYSRegister@dos.state.ny.us. Type “Regulatory Agenda” in the subject line.

When do I submit a Regulatory Agenda for publication in the *State Register*?

Regulatory Agendas are published twice a year. They must appear in the **first January** and the **last June** issue of the *State Register*.

Although the actual deadline dates vary year-to-year, at the latest you must have your Regulatory Agenda ready for submission around mid-December for the first January issue and mid-June for the last June edition. Please do not feel as if you must wait until the last possible Tuesday deadline to submit your Regulatory Agenda. We accept Regulatory Agendas during the three submission weeks prior to the actual issue deadline date.

Refer to each year’s *State Register Production Schedule* to determine the final filing deadline for any particular Regulatory Agenda. The *State Register* calendar and production schedule can be found on our website at www.dos.state.ny.us/info/calpromaster.html.

Where do I send my Regulatory Agenda?

E-mail (preferable), mail or hand-deliver your Regulatory Agenda to:

Department of State
Division of Administrative Rules
One Commerce Plaza
99 Washington Avenue, Suite 650
Albany, NY 12231-0001
email: nysregister@dos.state.ny.us

Chapter 7

FIVE YEAR REVIEW OF EXISTING RULES

Review of existing rules. Unless the contrary is specifically provided by another law, any rule which is adopted on or after January 1, 1997 shall be reviewed after five years, and, thereafter, at five-year intervals.

An agency shall submit for publication in the regulatory agenda published in January pursuant to section two hundred two-d of SAPA a list of the rules which must be reviewed in the ensuing calendar year. In addition to the information included in the agency's regulatory agenda, the agency shall provide an analysis of the need for and legal basis of the 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.

If an agency determines that a rule should be modified, it shall publish a notice of proposed rule making for such rule. This notice of proposed rule making 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 SAPA, 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 or other factors in the area affected by the rule necessitate changes in the rule.

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

For publication purposes in the *Register*, DO NOT COMBINE the Rule Review Notice with the Regulatory Agenda. They are two separate notices published in separate sections of the *Register*.

This provision does not apply to any rule which was adopted as a consensus rule.

The Rule Review should be e-mailed to NYSRegister@dos.state.ny.us. A hard copy is not required when e-mailing.

Chapter 8

GUIDANCE DOCUMENTS

Guidance documents. A 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.

Publication requirements. 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. 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.

Exemptions. The Secretary of State may exempt an agency from compliance with the publication requirements 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*.

If an agency claims exemption from the guidance document publication requirements, it must submit a certification to the Secretary of State claiming such exemption and identifying the website location or locations where the full text of all agency guidance documents are located. The form for submission of this certification is available on our website at <http://www.dos.state.ny.us/info/e-file/e-forms.html>.

Submission. The certification for a one-year exemption must be signed by the agency head and submitted to DAR in hard copy.

If a list of your guidance documents is available on your website, fill out the Guidance Document Certification form and choose item A. The form can be uploaded to the West Data Capture or e-mailed to nysregister@dos.state.ny.us. A signature is not required.

If you are submitting a list of your guidance documents for publication, e-mail the list (in Word or WordPerfect) to nysregister@dos.state.ny.us.

Five year review of guidance documents. 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.

Appendix A

SUBJECT INDEX

This index is not intended to be a complete directory to the Executive Law and SAPA rule making process. We designed this guide to provide a quick and easy way to locate major sections of law and a simple, plain language description of major elements.

The Subject Index is a three-column table. The first column provides a citation, the second column is an alphabetic list of the selected key functions and the third column is our plain language recap of the major elements. You must refer directly to the appropriate statute for complete information.

CITATION	TERM	DESCRIPTION
SAPA §202(5)(c)	adoption, notice of (form)	the actual notice published in the <i>State Register</i> . You must use a prescribed form to advertise adoption of a rule.
SAPA §202(5)	adoption, notice of (proposal required)	you may not file a rule or submit a notice of adoption unless the rule has been previously submitted through a notice of proposed rule making and you have complied with SAPA adoption provisions (excludes emergency adoptions).
SAPA §102(1)	agency (definition)	<p>ANY department, board, bureau, commission, division, office, council, committee of the state, officer of the state,</p> <p>OR public benefit corporation or public authority, at least one of whose members is appointed by the governor, and which is authorized by law to make rules or to make final decisions in adjudicatory proceedings.</p> <p>☛ Agency does NOT include the:</p> <ul style="list-style-type: none"> - Governor, - legislative or judicial branch agencies, - agencies created by interstate compact or international agreement, - Division of Military and Naval Affairs to the extent it exercises its responsibility for military and naval affairs, - Division of State Police, - Division of Criminal Justice Services' Identification and Intelligence Unit, - State Insurance Fund, - Unemployment Insurance Appeal Board, - Workers' Compensation Board (except they are required to publish a Regulatory Agenda under SAPA §202-d [WCL §117(2)]), - Division of Parole (except for the purposes of Art. 2) and - Department of Correctional Services (except for the purposes of Art. 2).
SAPA §203(2)(a)	amended notice of adoption	after a rule is filed and prior to the effective date you may amend, suspend or repeal a rule without proposing the rule by filing an Amended Notice of Adoption. The text of the rule being adopted must be compared to the text of the rule being amended, suspended or repealed for the purposes of text comparisons and the RIS and RFA.
SAPA §203(2)(b)	(substantial revision not allowed)	☛ You may not amend, suspend or repeal a newly adopted rule through the amended notice of adoption process if the action would constitute a substantial revision (it is not considered a substantial revision if the action taken only delays the effective date).

CITATION	TERM	DESCRIPTION
SAPA §202(5)(b)	assessment of public comment	for “(a)(i)” rules , a required element in a notice of adoption (based on written comments received by the agency and comments from public hearing/s).
SAPA §202(4-a)(b)		for “(a)(i)” rules , a required element in a notice of revised rule making (based on the written comments submitted to the agency and any comments presented at any public hearing held for the rule).
Exec. L. §102(1)(b)	certification	you must file a certified copy of every code, rule or regulation certified by the agency head, or if a board or commission by the chairman or secretary thereof.
Exec. L. §102(2)	certification (content)	a certification must cite the statutory authority, the date of adoption, date of publication in the <i>State Register</i> of the proposed rule making, and any other manner of publication of any additional prior notice. If the rule is exempt from SAPA, the certification must so state. The certification must be signed by the head of the department, authority, board, etc.; <i>except</i> when signed by a person designated by the head of the filing entity in writing and containing the signature of the designated person and such designation is filed in the Department of State.
Exec. L. §102(3)	compilation (NYCRR)	we are responsible for preparing the master compilation of all codes, rules and regulations (except those relating solely to the organization or internal management of a department, board, etc.) in a form and order as we may determine. The language of any existing code, rule or regulation may not be changed except a title or explanatory caption.
SAPA §202(1)(b)(i)	consensus rule (abbreviated notice)	An RIS, RFA, or RAFA is not required for a consensus rule you must 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. • There is no similar exemption for a JIS.
SAPA §102(11)	consensus rule (definition)	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: <ul style="list-style-type: none"> - repeals regulatory provisions which are no longer applicable to any person, - implements or conforms to nondiscretionary statutory provisions, OR <ul style="list-style-type: none"> - makes technical changes or is otherwise noncontroversial.
SAPA §202(1)(e)(iii)		• No rule defined by the Public Service Law as a “major change” may be adopted as a consensus rule.
SAPA §202(1)(b)(ii)	consensus rule (negative comment received)	you must withdraw the notice of proposed rule making for any rule proposed as a consensus rule if the agency receives any comment which contains any objection to the adoption of rule.
SAPA §103(1)(c)	consensus rule (public hearing, publication)	for “(a)(i)” rules , your agency may dispense with any statutory requirement for public hearing or publication of a notice in any newspaper or publication other than the <i>State Register</i> unless such requirement is explicitly directed at the rule which is being adopted.
SAPA 202(1)(b)(iii)		for “(a)(ii)” rules , any public hearing required by law is deemed to be “explicitly directed.”

CITATION	TERM	DESCRIPTION
SAPA §202-bb(4)(b)	consensus rule (RAFA exemption)	an RAFA is not required for a rule proposed as a consensus rule.
SAPA §202-a(5)(c)	consensus rule (RIS exemption)	an RIS is not required for a rule proposed as a consensus rule.
SAPA §202-bb(3)(b)	consensus rule (RFA exemption)	an RFA is not required for a rule proposed as a consensus rule.
n/a	consensus rule (JIS required)	Warning! there is no exemption from the requirement to submit a JIS for a rule proposed as a consensus rule.
SAPA §202(3)	continuation (special extension)	IF , within 90 days of expiration of a proposed rule, you submit a notice of revised rule making, the rule making will be continued for an additional 90 days <i>beyond</i> the date on which it was originally set to expire.
SAPA §202(6-a)(a) SAPA §202-b(2) SAPA §202-bb(3)	distribution (notices to Ex. L 101-a SAPA 202(6-a) officers)	you must transmit any rule making notice with the full text of the rule, RIS, RFA (including a copy of any analysis and any finding, and reasons for such finding), RAFA (including a copy of any analysis and any finding, and reasons for such finding) or revisions thereof and any other information submitted to us to the: Governor, Temporary President of the Senate, Speaker of the Assembly, Administrative Regulations Review Commission and Governor's Office of Regulatory Reform at the same time you submit your notice to us.
SAPA §202(6-a)(b)	(public availability)	you must make a copy of the complete text of the rule and all ancillary statements available to the public at the same time you submit your notice to us and send a copy to any person upon written request.
SAPA §202(6-a)(c)	distribution (public mailing lists)	each agency must notify every person who has submitted a written request for such notification of all rule makings. Such requests expire December 31 each year and must be renewed on or after December 1 for the succeeding year.
	(fees)	an agency may charge any person requesting a notice a fee consisting of the cost of preparation, handling and postage.
SAPA §202(6)(a)	emergency adoption	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 §202(1) (the proposal process) would be contrary to the public interest , the agency may dispense with all or part of such requirements and adopt a rule on an emergency basis.
SAPA §202(6)(d)	emergency adoption, notice of (form)	the actual notice published in the <i>State Register</i> . You must use a prescribed form to advertise emergency adoption of a rule.
SAPA §202(6)(d)(viii) SAPA §202(6)(d)(ix) SAPA §201-a(2)(f)	(RIS, RFA, RAFA, JIS 30-day waiver)	you must attach an RIS, RFA, RAFA and or JIS OR a statement indicating one will be published in the <i>State Register</i> within 30 days of the filing of the emergency rule.
SAPA, §202(6)(d)(iii)	emergency adoption and proposed rule making, notice of (form)	a prescribed form that combines the actions needed to simultaneously advertise emergency adoption of a rule and to propose a new rule or the amendment or repeal of an existing rule.

CITATION	TERM	DESCRIPTION
SAPA §202(6)(b)	emergency rule (duration)	unless otherwise provided in law, an emergency rule cannot be effective for more than 90 days after being filed with the Secretary of State unless within that time frame the agency completes the regular rule making process (notice of proposed rule making, notice of adoption, etc.).
	(re-adoption; duration)	if an emergency rule is re-adopted prior to expiration, the re-adoption and any subsequent re-adoptions will remain in effect for no longer than 60 days.
SAPA §202(6)(c)	(permanent duration for specific emergency rules)	if an emergency rule in regard to security authorizations, corporate or financial structures or reorganization thereof, and for which a statute does not require a public hearing be held prior to adoption, will not expire if the agency finds the purpose of the rule would be frustrated if subsequent notice procedures were required.
Executive Order No. 17 see 9 NYCRR section 7.17 - Establishing Measures to Evaluate Costs of Mandates on Local Government to Advance Property Tax Relief.		
Executive Order No. 25 see 9 NYCRR section 7.25 - Establishing a Regulatory Review and Reform Program.		
SAPA §202(2)(a)	expiration date (proposal)	for “(a)(i)” rules , a notice of proposed rule making expires within 365 days after the latter of: (i) publication in the <i>State Register</i> or (ii) the date of the last public hearing announced in the notice — unless adopted and filed with the Secretary of State.
SAPA §203(3)	(rejection)	we must reject any rule filed for adoption after the expiration date of its corresponding proposal.
SAPA §202(2)(b)	expiration notice	we automatically publish a notice of expiration in the <i>State Register</i> when a proposal term expires.
Exec. L. §102(4)(d)	fee (copying)	photocopies of any code, rule or regulation must be made available to the public upon payment of a fee not to exceed 25¢ per page.
Exec. L. §102(1)(a)	filing; effective date	no code rule or regulation is effective until it is filed with the Secretary of State, unless a later date is required by statute.
SAPA §203(1)		no rule is effective until filed with the Secretary of State and the Notice of Adoption is published in the <i>State Register</i> unless a later date is required by statute or specified in the rule, the rule is adopted as an emergency, or if it is a “(a)(ii)” rule.
	(certification)	each adopted rule must have a certification attached (<i>See also, certification</i>).
Constitution of the State of New York, Art. IV, §8	filing; publication (rules and regulations)	no rule or regulation made by any state department, board, bureau, officer, authority or commission (<i>except</i> those related to the organization or internal management), is effective until filed in the Department of State. The Legislature must provide for the speedy publication of such rules and regulations by appropriate laws.

CITATION	TERM	DESCRIPTION
SAPA §202-e	guidance document	Not less than once each year, every agency shall submit to the Secretary of State for publication in the <i>State Register</i> a list of all Guidance Documents on which the agency currently relies [SAPA §202-e(1)]. An agency may be exempted from compliance with the requirements of SAPA section 202-e(1) if the agency has published on its website the full text of all Guidance Documents on which it currently relies [SAPA §202-e(2)]. If this applies to your agency, identify the website where the full text of documents are located in a Certification signed by the agency head.
Exec. L. §102(1)(e)	incorporation by reference (authorization for filing requirements)	the Secretary of State is authorized to promulgate rules establishing procedure, forms, style and font for submission of every code, rule and regulation incorporated by reference into the NYCRR.
SAPA §202(7)(b)	(2,000 word limit)	reference material is excluded from the 2,000 word limit for a rule.
Exec. L. §102(4)(c)	incorporation by reference (distribution)	at the same time material incorporated by reference is filed with us, you must transmit a copy (except a U.S. statute or code, rule or regulation published in the <i>Code of Federal Regulations</i> or the <i>Federal Register</i>) to the Legislative Library and 13 designated Supreme Court law libraries.
Exec. L. §102(1) (d)	incorporation by reference (effective)	no amendment to any material incorporated by reference shall become effective unless adopted and filed with the Secretary of State.
Exec. L. §102(4)(e)	incorporation by reference (exclusion)	the Secretary of State may exclude from the printed NYCRR any material that is incorporated by reference.
Exec. L. §102(1)(c)	incorporation by reference (precise identification required)	any code, rule or regulation which includes the text of any U.S. statute, code, rule or regulation or any material previously published in the <i>Code of Federal Regulations</i> or in the <i>Federal Register</i> or any previously published data, criteria, standards, specifications, techniques, illustrations or other information reasonably available to regulated parties, must set forth in its text a precise identification of such material, including at least the: applicable titles, dates, editions, page numbers, section numbers, and authors, the names and addresses of the publisher from whom a copy may be obtained, and the designated office/s of the adopting agency where the material is available for public inspection and copying.
SAPA §201-a(1)	job impact	in developing a rule, agencies must strive to accomplish the objectives of applicable statutes in a manner that minimizes any unnecessary adverse impacts on existing jobs and promotes development of new employment opportunities, including opportunities for self-employment, for the residents of the state.
SAPA §201-a(2)(b)	job impact statement (content)	for “(a)(i)” rules only , the elements required to be in a JIS.
SAPA §201-a(2)(c)	(options)	when the available information is insufficient to determine whether a rule will have a substantial adverse impact on jobs or employment opportunities, you may publish a statement soliciting the information you need.

CITATION	TERM	DESCRIPTION
SAPA §201-a(2)(h)	job impact statement, consolidated	a consolidated JIS may be submitted for a series of closely related rules treated as one rule.
SAPA §201-a(2)(d)	job impact statement, revised	you must submit a Revised JIS when: <ul style="list-style-type: none"> - (i) the original JIS is deemed inadequate or incomplete; - (ii) substantial revisions to a proposed rule necessitate modification/s to the statement; - (iii) information received from others allows a more complete evaluation.
	(2,000 word limit)	the same word limit applies to a Revised JIS as the original JIS.
SAPA §201-a(2)(e)	(statement)	if after requesting information you still cannot determine whether the rule will have a substantial adverse impact, you may adopt the rule. However, you must submit a Revised JIS including a statement of the measures taken to evaluate the potential impacts.
SAPA §202(9)	notice forms	authority under which we provide standard rule making notice forms to be used by all agencies.
SAPA §202(9)(iii)	notice rejections (noncompliance)	authority under which we reject notices that are not in substantial compliance. Also provides for giving prompt notice of rejection to the agency and advising the agency of corrective action.
Exec. L. §102(4)(a)	NYCRR (public access)	we provide public access to the NYCRR for inspection and copying
Exec. L. §102(4)(b)		each agency must make readily available at a designated agency office, for public inspection and copying, the full text of all codes, rules and regulations adopted by the agency.
		☛ Access must include documents incorporated by reference.
Exec. L §105	NYCRR (references)	amendments must refer to the appropriate Title and to the section or paragraph published in the NYCRR.
	(certain approvals required prior to adoption)	in the case of proposed regulations, prior to the adoption of any resolution establishing a code, rule or regulation, an agency must seek approval in writing of the proposed title, captions and numbers of such code, rule or regulation and any Parts, paragraphs or sections thereof.
Exec. L. §104 19 NYCRR 261.4	NYCRR (style; numbering)	the Secretary of State may advise rule making agencies to the end that codes, rules and regulations be uniform in style and form, be properly numbered and captioned and be free from obsolete matter.
Exec. L. §102(5)	NYCRR (title)	the <i>Official Compilation of Codes, Rules and Regulations of the State of New York</i> is the title of the compilation printed by the Secretary of State and presumptively establishes the codes, rules and regulations of the State of New York, except rules that relate solely to the organization or internal management of a department, board, bureau, authority, commission or other agency of the state. Publication of NYCRR was initiated on January 1, 1945. Official supplements include any new codes, rules and regulations and any changes that add, amend or repeal same.
SAPA §201	plain language	you must strive to ensure that, to the maximum extent practical, agency rules and statements are clear and coherent, using words with common and everyday meanings.

CITATION	TERM	DESCRIPTION
SAPA §207(3)	proposed rule making (as a result of 5-year review)	if you determine, as a result of a 5-year review, that a rule should be modified, you must publish a notice of proposed rule making and, in addition to the information required for such a notice, including a reasoned justification for modification of the rule and an assessment of public comments prepared in accordance with that required for a revised rule making. Where appropriate, you must also include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitated changes to the rule.
SAPA §202(1)(f)	proposed rule making, notice of (form)	the notice and supporting documents that must be published in the State Register for a proposed rule making; we provide a form to identify the specific statutory authority and other important information concerning the proposed rule.
SAPA §202(1)(c)	proposed rule making, notice of (other publication)	the requirement to publish a notice of proposed rule making in the <i>State Register</i> does not preclude you from also publishing in newspapers of general circulation or in trade or professional publications.
SAPA §202(1)(d)	proposed rule making, notice of (public hearing)	the requirement to publish a notice of proposed rule making in the <i>State Register</i> does not preclude you from also initiating a public hearing for an “(a)(ii)” rule; any such notice must be published within a reasonable time prior to such hearing.
SAPA §202(1)(a)	public comment (last date)	a notice of proposed rule making must include the last date for submission of comments.
SAPA §202(4-a)(a)		a notice of revised rule making must include the last date for submission of comments.
SAPA §202(1)(a)	public comment period (proposed rule)	agencies must accept public comment for, and must not schedule any public hearing that is required by statute until, at least 45 days after the notice of proposed rule making is published in the <i>Register unless</i> a different time is specified by statute. ☛ Because the <i>Register</i> is published every Wednesday, the 45-day period always expires on a Saturday. Pursuant to the General Construction Law, you must accept public comment at least through close of business the following Monday and action to adopt cannot be taken until the next business day: Tuesday. When Monday is a holiday, you must accept comment through close of business the following Tuesday and cannot take action to adopt until the next business day thereafter: Wednesday.
SAPA §202(9)(b)(ii)	public comment, electronic submission	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 <i>State Register</i> and that electronic mail address, permitting a person viewing the electronic copy of the <i>State Register</i> to immediately submit comments by electronic mail. A copy shall also be provided to the Governor’s Office of Regulatory Reform.

CITATION	TERM	DESCRIPTION
SAPA §202(9)(a)(iv)	publication	<p>we are responsible for publishing all notices and statements that are required to be published in the <i>State Register</i> as soon as practical.</p> <p>☛ The <i>State Register</i> is published each Wednesday. Every notice received in DAR by close of business each Tuesday is published in the weekly issue dated 15 days later. Our office hours are 8:00 a.m. – 5:00 p.m.</p>
SAPA §202-d(1)	regulatory agenda	<p>specified agencies must and any other agency may submit a regulatory agenda for publication in the first January issue and the last June issue of the <i>State Register</i> to solicit comments concerning any rule which the agency is considering proposing, but for which no notice of proposed rule making has been submitted.</p> <p>A regulatory agenda is a list and brief description of subject matter being considered and contact information.</p> <p>An agency that prepares a regulatory agenda and has a website must also post the agenda on its website.</p>
SAPA §202-d(2)	regulatory agenda (publication not a prerequisite for future adoption)	<p>you may adopt rules that did not appear in a regulatory agenda or in a form different than the one summarized in a regulatory agenda. If a rule proposed by an agency that is required to publish a regulatory agenda was not included in a regulatory agenda, the notice of proposed rule making must include a statement that the rule was not considered at the time the regulatory agenda was submitted for publication. The agency is not required to adopt a rule summarized in a regulatory agenda.</p>
SAPA §207(2)	regulatory agenda (subsequent, periodic review required)	<p>you must submit for publication in the regulatory agenda published in January (pursuant to §202-d) a list of the rules scheduled for five-year review. In addition to regulatory agenda items required under §202-d, you must also provide an analysis of the need for and legal basis of each rule scheduled for review and invite public comment on the continuation or modification of such rules and the last day for submission of comments which shall be not less than 45 days from the date of publication.</p>
SAPA §202-b(1)	regulatory flexibility analysis for small business and local governments (RFA)	<p>in developing a rule, agencies must consider utilizing approaches to accomplish the objectives of a statute while minimizing any adverse economic impact on small businesses or local governments; consider:</p> <ul style="list-style-type: none"> - (a) differing compliance/reporting requirements or timetables that take into account available resources; - (b) use of performance rather than design standards; - (c) whole or partial rule exemptions that do not endanger the public health, safety or general welfare.

CITATION	TERM	DESCRIPTION
SAPA §202-b(2)	regulatory flexibility analysis (content)	<p>for §102(2)(a)(i) rules the RFA must:</p> <ul style="list-style-type: none"> - (a) describe the types and estimate the number of small businesses and local governments to which the rule will apply; - (b) describe any reporting, recordkeeping and other compliance requirements; and professional services needed; - (c) estimate any costs to implement and continue to comply with the rule; - (d) provide an assessment of the economic and technological feasibility of compliance by small businesses and local governments; - (e) indicate how the rule was designed to minimize adverse economic impacts on small businesses and local governments; and - (f) describe how the agency ensured the participation of small businesses and local governments in developing the rule.
SAPA §202-b(5)	(options)	quantifiable or numerical descriptions allowed, or more general descriptive statements if quantification is not practicable or reliable.
SAPA §202-b(6)	regulatory flexibility analysis (ensure participation)	<p>you must assure that small businesses and local governments have had the opportunity to participate in the rule making process through:</p> <ul style="list-style-type: none"> - (a) publication of a general notice in appropriate publications; - (b) direct notification of interested, affected parties - (c) special open conferences; - (d) adoption or modification of agency procedural rules to reduce the cost or complexity of participation.
SAPA §202-b(3)(a)	regulatory flexibility analysis (exemptions)	<p>“(a)(ii)” rules and rules that do not impose adverse economic impacts or recordkeeping compliance requirements on small businesses or local governments are exempt from the RFA requirement; agency must provide statement of findings and the reasons upon which the finding was made that the rule would impose no adverse economic impacts.</p> <p>an RFA is not required for a rule proposed as a consensus rule.</p>
SAPA §202-b(3)(b)		
SAPA §202-b(4)	regulatory flexibility analysis, consolidated	a consolidated RFA may be submitted for a series of closely related rules treated as one rule.
SAPA §202-b(7)	regulatory flexibility analysis, revised	<p>you must submit a revised RFA when:</p> <ul style="list-style-type: none"> - (i) the information in the analysis is inadequate or incomplete (must be submitted as soon as practicable); - (ii) substantial revisions to a proposed rule necessitate modification/s to the analysis; - (iii) nonsubstantial revisions to the most recently published version of the proposed rule necessitate modification/s to the analysis. <p>the same word limit applies to a Revised RFA as the original RFA</p>
	(2,000 word limit)	
SAPA §202-a(1)	regulatory impact	in developing a rule agencies must, to the extent consistent with the objectives of applicable statutes, consider using approaches which are designed to avoid undue deleterious economic impacts or overly burdensome impacts.

CITATION	TERM	DESCRIPTION
SAPA §202-a(3)	regulatory impact statement (RIS) (content)	<p>for §102(2)(a)(i) rules, the RIS must:</p> <ul style="list-style-type: none"> - (a) identify and describe the statutory authority - (b) describe the purpose of, necessity and benefits of the rule; - (c) estimate any costs to implement and continue to comply with the rule; - (d) describe any paperwork and reporting requirements; - (e) describe any mandates on local government; - (f) identify any duplication with other state or federal legal requirements; - (g) identify whether any alternatives were considered; - (h) state whether and, if so why, the rule exceeds any minimum federal standards; and - (i) estimate the time needed for regulated parties to comply with the rule.
SAPA §202-a(5)(a)	(exemptions)	an RIS exemption may be claimed for a rule involving only a technical amendment; a statement in the rule making notice must include the reason/s for claiming exemption. Examples of a technical amendment include: change of address, correction of spelling or punctuation, similar nonsubstantial changes.
SAPA §202-a(5)(b)		“(a)(ii)” rules are exempt from RIS requirement.
SAPA §202-a(5)(c)		an RIS is not required for a rule proposed as a consensus rule.
SAPA §202-a(4)(a) and (b)	regulatory impact statement, consolidated	<p>for purposes of paperwork reduction a consolidated RIS may be submitted for:</p> <ul style="list-style-type: none"> - a series of closely related rules treated as one rule - any series of virtually identical rules proposed in the same year.
SAPA §202-a(6)	regulatory impact statement, revised	<p>you must submit a revised RIS when:</p> <ul style="list-style-type: none"> - (i) the information in the statement is inadequate or incomplete (must be submitted as soon as practicable); - (ii) substantial revisions to a proposed rule necessitate modifications to the statement (describe reason/s for the change/s and include modified language); - (iii) nonsubstantial revisions to the most recently published version of the proposed rule necessitate modification/s to the statement (describe reason/s for the change/s and include modified language). <p>the same word limit applies to a Revised RIS as the original RIS.</p>
	(2,000 word limit)	
SAPA §202(4-a)(a)	revised rule making, notice of	for “(a)(i)” rules , prior to adoption, you must submit a notice of revised rule making for any proposed rule which contains a substantial revision. (See SAPA §102(9))
	(last date for public comment)	the notice of revised rule making must indicate the last date for submission of comments.
SAPA §202(4-a)(c)		☛ You cannot submit a revised rule making for a rule proposed as a consensus rule.
SAPA §202(4-a)(c)	revised rule making notice of (form)	the actual notice published in the <i>State Register</i> . You must use a prescribed form to substantially revise a proposed rule.

CITATION	TERM	DESCRIPTION
SAPA §202(4-a)(a)	revised rule making (public comment)	agencies must accept public comment for <i>at least 30 days after</i> the notice of revised rule making is published in the <i>Register unless</i> a different time is specified by statute. <ul style="list-style-type: none"> ☛ Because the <i>Register</i> is published every Wednesday, the 30-day period always expires on a Friday. Pursuant to the General Construction Law, you must accept public comment at least through close of business that Friday.
SAPA §102(2)(a)(i)	rule (definition of “(a)(i)” rule)	the whole or part of each agency statement, regulation or code of general applicability that: <ul style="list-style-type: none"> - 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
SAPA §102(2)(a)(ii)	rule (definition of “(a)(ii)” rule)	AND rules include the amendment, suspension, repeal, approval or prescription for the future of: <ul style="list-style-type: none"> - 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.
SAPA §102(2)(b)	rule exemptions	a list of those types of documents or guidance materials specifically not included in the definition of a rule.
Executive Order No. 20 (E.O. 20)	rule review (Executive Branch; proposed)	Executive Order 20 establishes the position of Director of Regulatory Reform, with the responsibility to, among others, provide oversight of the regulatory process of state agencies through the review and analysis of proposed or existing rules. EO 20 provides criteria for rule review, establishes procedures for submissions and Executive Branch review of notices of proposed rule making and notices of revised (proposed) rule making. (<i>See Appendix C for criteria.</i>)
SAPA §207(1)	rule review (periodic; adopted) (exemptions)	unless specifically contrary to another law, any rule adopted on or after January 1, 1997 must be reviewed after five years and, there-after, at five-year intervals. <ul style="list-style-type: none"> ☛ 5-year review does NOT apply to minor, obsolete, invalid rules and rates, tariffs, etc., defined as §102(2)(a)(ii) rules.
SAPA §207(4)	rule review (results of “no change” to be published)	if you determine, as a result of a 5-year review, that a rule should continue without modification, you must publish a notice to that effect in the <i>State Register</i> . The notice must identify the rule and its statutory authority and include a reasoned justification for continuation without modification and an assessment of public comment received in response to publication in the regulatory agenda and prepared in accordance with that required for a revised rule making.
SAPA §102(10)	rural area (definition)	those portions of the state as defined in §481(7) Exec. L.

CITATION	TERM	DESCRIPTION
<p><i>44 counties have a population less than 200,000:</i> Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuylar, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates.</p> <p><i>9 counties with certain townships have a population density of 150 persons or less per square mile:</i> Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.</p>		
SAPA §202-bb(2)(b)	rural area flexibility analysis (RAFA)	<p>in developing a rule, agencies must consider utilizing approaches to accomplish the objectives of a statute while minimizing any adverse impact on public and private sector interests in rural areas; consider:</p> <ul style="list-style-type: none"> - (i) differing compliance/reporting requirements or timetables that take into account available resources; - (ii) increased use of performance or outcome standards rather than design or input standards; - (iii) whole or partial rule exemptions that do not endanger the public health, safety or general welfare.
SAPA §202-bb(3)	rural area flexibility analysis (content)	<p>for § 102(2)(a)(i) rules the RAFA must:</p> <ul style="list-style-type: none"> (a) describe the types and estimate the number of rural areas in which the rule will apply; (b) describe any reporting, recordkeeping and other compliance requirements, and any professional services needed to comply with the rule; (c) estimate any costs to implement and continue to comply with the rule; (d) indicate how the rule was designed to minimize any adverse impacts on entities in rural areas; and (e) describe how the agency ensured the participation of public and private interests in rural areas.
SAPA §202-bb(4)(a)	(exemptions)	<p>“(a)(ii)” rules and rules that do not impose adverse impacts or recordkeeping compliance requirements on public or private entities in rural areas are exempt from the RAFA requirement; agency must provide statement of finds and reasons upon which the findings was made that the rule would impose no adverse impact.</p>
SAPA §202-bb(4)(b)	(options)	<p>an RAFA is not required with a rule proposed as a consensus rule.</p>
SAPA §202-bb(6)		<p>quantifiable or numerical descriptions allowed, or more general descriptive statements if quantification is not practicable or reliable.</p>
SAPA §202-bb(7)	rural area flexibility analysis (notification requirements)	<p>you must assure that public and private interests in rural areas have had the opportunity to participate in the rule making process through:</p> <ul style="list-style-type: none"> - (i) publication of a general notice in appropriate publications; - (ii) direct notification of interested, affected parties; - (iii) special open conferences; - (iv) adoption or modification of agency procedural rules to reduce the cost or complexity of participation.
SAPA §202-bb(5)	rural area flexibility analysis, consolidated	<p>a consolidated RAFA may be submitted for a series of closely related rules treated as one rule.</p>

CITATION	TERM	DESCRIPTION
SAPA §202-bb(8)	rural area flexibility analysis, revised (2,000 word limit)	you must submit a revised RAFA when: <ul style="list-style-type: none"> - (a) the information in the analysis is inadequate or incomplete (must be submitted as soon as practicable); - (b) substantial revisions to a proposed rule necessitate modifications to the analysis; - (c) nonsubstantial revisions to the most recently published version of the proposed rule necessitate modification/s to the analysis. <p>the same word limit applies to a Revised RAFA as the original RAFA</p>
SAPA §102(8)	small business (definition)	any business which is resident in this state, independently owned and operated and that employs 100 or less people.
SAPA §102(9)	substantial revision (definition)	any addition, deletion or other change in the text of a proposed rule which materially alters its purpose, meaning or effect. <p>☛ Substantial revision does NOT include any change that merely defines or clarifies text. For the purposes of publication in the <i>State Register</i>, the revised text must be compared to the originally proposed text or, if previously revised, to the text in the most recently published revision.</p>
SAPA §202(4)	withdrawal, notice of (form)	you may withdraw a notice of proposed rule making (terminate a rule making) by submitting a notice of withdrawal.

Appendix B

RULE MAKING FORMS AND FORMATS

The Department of State prescribes forms and provides formats for all rule making notices and attachments that you must submit for publication purposes. These are available in PDF format at our website:

<http://www.dos.state.ny.us/info/e-file/e-forms.html>

Please remember that you must use these prescribed notice forms.

Notice forms

- Notice of Proposed Rule Making
- Notice of Proposed Rule Making (rate making)
- Notice of Revised Rule Making
- Notice of Withdrawal
- Notice of Adoption
- Amended Notice of Adoption
- Notice of Emergency Adoption
- Notice of Emergency Adoption and Proposed Rule Making
- Notice of Emergency Adoption and Revised Rule Making
- Guidance Documents Certification by Agency Head

Formats (SAPA)

- Regulatory Impact Statement
- Regulatory Flexibility Analysis (for Small Businesses and Local Governments)
- Rural Area Flexibility Analysis
- Job Impact Statement
- Notice of Public Hearing and Public Notice
- Regulatory Agenda

Other

- Notice of Availability of State and Federal Funds
- Incorporation by Reference Certification

Appendix C

RULE MAKING CRITERIA (GORR)

GORR reviews agency material for compliance with the following criteria:

1. The rule:
 - a) is clearly within the authority delegated by law;
 - b) is consistent with and necessary to achieve a specific legislative purpose;
 - c) is clearly written so that its meaning will be easily understood by those persons affected by it;
 - d) does not unnecessarily duplicate or exceed existing federal or state statutes or rules;
 - e) is consistent with existing state statutes and rules;
 - f) is consistent with state statutory requirements, will produce public benefits which will outweigh the costs, if any, imposed on affected parties;
 - g) does not impose a mandate on local governments or school districts which is not fully funded, except as specifically required by state statute;
 - h) prescribes methodologies or requirements that allow regulated parties flexibility and encourage innovation in meeting the legislative or administrative requirements and objectives underlying the rule;
 - i) is based on credible assessments, using recognized standards, of the degree and nature of the risks which may be regulated, including a comparison with every-day risks familiar to the public;
 - j) gives preference to the least costly, least burdensome regulatory and paperwork requirements needed to accomplish legislative and administrative objectives;
 - k) is based upon the best scientific, technical and economic information that can reasonably and affordably be obtained; and
 - l) if possible and practical, favors market-oriented solutions and performance standards over command-and-control regulation.
2. The agency has complied with SAPA §§ 202-a, 202-b, 202-bb and 201-a, relating to the regulatory impact statement, regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis and job impact statement, respectively.

Appendix D

§202(6-a) and §101-a OFFICERS

At the same time a rule making notice is submitted to the DOS for publication in the *State Register*, a copy with full text of the rule and any attached statements must also be sent to certain designated parties. It is now possible **and recommended** to send electronic copies to both Administrative Regulations Review Commissions (Assembly and Senate) and the Governor's Office of Regulatory Reform.

E-mail instead of hard copy submission to Senate and Assembly ARRC does not constitute any change in the types of documents agencies must send. For example, full text of rules AND regulatory impact statements and other required statements and documents that have been summarized must be included with the completed pdf rule making form.

E-mailing Instructions: For every summary that is provided, attach the full text of that rule or statement to your pdf rule making form. To do so, click on the paper clip in the lower left-hand corner of the form. This will indicate the documents already attached to the rule making form. Click on add to attach additional documents. Choose the additional documents to be included with the pdf form. Send the completed pdf form containing all attachments via e-mail to:

Assembly ARRC: rulemaking@assembly.state.ny.us

Senate ARRC: rulemaking@senate.state.ny.us

GORR: regs@gorr.state.ny.us

The **Senate Majority Leader** still requires hard copy submission:

Majority Leader
New York State Senate
Legislative Office Building
Room 909
Albany, NY 12247

Incorporation by Reference materials: Electronic Document Submission

When an electronic version is available, include the completed Incorporation by Reference Certification, DOS-1196 (Rev. 1/05). The certification provides the URL where the document can be located.

Note: Unsigned electronic copies of the certification may be submitted to GORR and ARRC. Only signed hard copies will be accepted by the Department of State (see Chapter 5 *How to Incorporate by Reference* for DOS requirements).

Hard Copy Submission — of Rule Making documents

Administrative Regulations Review Commission (Assembly):

Administrative Regulations Review Commission
New York State Assembly
Albany, NY 12248

Administrative Regulations Review Commission (Senate):

Director

Administrative Regulations Review Commission

State Capitol

Albany, NY 12247

Governor's Office of Regulatory Reform:

Counsel

Governor's Office of Regulatory Reform

Empire State Plaza

Agency Bldg. 1, P.O. Box 2107

Albany, NY 12220-0107

Appendix E

SUPREME COURT LAW LIBRARIES

Thirteen Supreme Court Law Libraries are designated to serve as repositories of materials* incorporated by reference into the NYCRR. Court Administration has specific requirements for these filings as follows:

Supreme Court Law
Library/Civil Branch
60 Centre Street
New York, NY 10007
(First Judicial District)

Supreme Court Law Library
92 Court Street, Room 107
Binghamton, NY 13902
(Sixth Judicial District)

Supreme Court Law Library
General Courthouse
88-11 Sutphin Boulevard
Jamaica, NY 11435
(Eleventh Judicial District)

Supreme Court Law Library
360 Adams Street
Brooklyn, NY 11201
(Second Judicial District)

Supreme Court Law Library
Steuben County Courthouse
Three Pulteney Square East
Bath, NY 14810
(Seventh Judicial District)

Supreme Court Law
Library/Civil Branch
851 Grand Concourse
Bronx, NY 10451
(Twelfth Judicial District)

Supreme Court Law Library
Courthouse
285 Wall Street
Kingston, NY 12401
(Third Judicial District)

Supreme Court Law Library
77 West Eagle Street
Buffalo, NY 14202
(Eighth Judicial District)

Supreme Court Law Library
25 Hyatt Street, Room 515
Staten Island, NY 10301
(Thirteenth Judicial District)

Supreme Court Law Library
72 Clinton Street
Plattsburgh, NY 12901
(Fourth Judicial District)

Supreme Court Law Library
Westchester County Courthouse
111 Dr. Martin Luther King, Jr.
Boulevard
White Plains, NY 10601
(Ninth Judicial District)

Supreme Court Law Library
Onondaga County Courthouse
401 Montgomery Street
Syracuse, NY 13202
(Fifth Judicial District)

Supreme Court Law Library
100 Supreme Court Drive
Mineola, NY 11501
(Tenth Judicial District)

*No material which is a United States statute or a code, rule or regulation published in the *Code of Federal Regulations* or in the *Federal Register* shall be submitted to the Supreme Court Libraries.

General filing requirements [22 NYCRR Part 123]. No material submitted to a Supreme Court law library pursuant to §102(4)(c) of the Executive Law will be accepted for filing therewith unless the following requirements are met:

- a. All material submitted must be (i) in electronic form or (ii) in the form of microfiche or ultrafiche cards, and must comply with the provisions of subdivision (b1) and (b2) herein, respectively, unless the submitting agency shall certify that such material cannot be obtained commercially in either form, in which event the material shall be in the form prescribed by subdivision (c) herein.
- (b1) Form for materials submitted in electronic form. Materials submitted in electronic form shall be in such form as approved by the Chief Administrator of the Courts, which may include electronic disks or transmissions between computers or other machines. There also shall be included within each submission the information set forth in subdivision (b2).
- (b2) Form for material submitted in microfiche or ultrafiche.
 1. Material submitted in the form of microfiche or ultrafiche cards shall display the full text of the code, manual, volume or publication of which it is a part.
 2. There shall be included with such cards a separate written index of the material displayed thereon, including the following information for each entry:
 - i. the name of the publication, including the volume number and volume title if applicable;
 - ii. the name of the publisher or the name of the organization responsible for writing the material, whichever is more useful for identification purposes;
 - iii. the date of publication;
 - iv. the name of the State agency adopting the publication; and
 - v. cross-references to the NYCRR sections which reference the publication pursuant to section 102(1)(c) of the Executive Law.
- c. Form for material submitted when electronic form, microfiche and ultrafiche are unavailable.
 1.
 - i. If the material were published in a permanently bound volume, the bound volume itself must be submitted for filing. Neither photocopies nor pages from bound volumes will be accepted.
 - ii. If a soft-bound publication contains fewer than 100 pages, it must be placed in a rigid-cover binder.
 - iii. If the publication is self-covering, *i.e.*, the cover and the inside pages are made of the same or similar stock, the publication must be placed in a rigid-cover binder.
 2. Loose-leaf publications must be bound in the loose-leaf binder specifically manufactured and imprinted by the publisher for sorting the pages.
 3. The following information must appear on an adhesive label placed in the upper left-hand corner of the front cover of each publication or, if the publication is enclosed in a binder, in the upper left-hand corner of the front cover of the binder:

- i. the name of the publication, including the volume number title if applicable;
 - ii. the name of the publisher or the name of the organization responsible for writing the material, whichever is more useful for identification purposes;
 - iii. the date of the publication;
 - iv. the name of the State agency adopting the publication; and
 - v. cross-references to the NYCRR sections which reference the publication pursuant to section 102(1)(c) of the Executive Law.
4. A rigid-cover binder may not contain more than one publication nor more than one edition of a periodical or series publication.
- d. If for any reason the nature of the material makes it impractical for a State agency to comply with any of the provisions of this section, the agency may request the Chief Administrator of the Courts to grant an exemption therefrom.
 - e. No material which is a United States statute or a code, rule or regulation published in the *Code of Federal Regulations* or in the *Federal Register* shall be submitted.