

What is Rule Making in New York?

The State Legislature is responsible for enacting the general laws in New York. In doing so, the Legislature often delegates “rule making powers” to the state’s administrative departments and agencies. These agencies are then empowered to develop and enforce the rules and regulations they find necessary to implement the broad policies adopted by the Legislature.

The phrase “rules and regulations” is often confusing. Actually, the two words are interchangeable. In New York, the term “rule” is used most frequently. Hence, the procedures that are followed by state agencies when adopting rules have become known as “the rule making process.” This process is designed to ensure that the public has an opportunity to comment on, and participate in, the adoption of such rules.

The rule making process

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

In many cases, public hearings will be held around the state to better provide people with an opportunity to argue for or against a proposal. If no hearing is scheduled, or if you cannot attend a hearing, both written and oral comments must be taken into consideration by the agency prior to adoption of a rule. Because it is important for citizens to have this opportunity to comment, the Legislature has provided that agencies must accept comment for a required statutory period of time (minimum of 45 or 60 days, depending on situation) after the proposal is first published in the Register. Agencies often allow more than the minimum number of days for comment and hold public hearings although they may not be required to do so.

After publication in the Register and receipt of public comment, the agency may either adopt, revise or withdraw the proposal. If adopted, the agency must file the full text of the rule with the Department of State. At the same time, a

“Notice of Adoption” is published in the Register, indicating that the proposal has in fact, been adopted. If the final rule will be substantially different from the proposed rule, the agency must publish a “Notice of Revised Rule Making” and accept public comment for at least another 30 days.

If a proposal is withdrawn, the agency cannot adopt the same or a similar proposal without first providing the public with another opportunity to comment.

To help readers track rule making activities, the regular weekly Register contains an Action Pending Index that lists all proposed rules still under consideration. Additionally, a cumulative calendar year list of all rule making activity is printed as a supplement to the Register four times each year. This Quarterly Index includes the date each rule was proposed, revised, adopted or withdrawn, etc. By using these references, readers can quickly and easily learn the status of any proposed rule.

New York State Register

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Official Compilation of Codes, Rules and Regulations of the State of New York

The full text of all state agency rules is published in the NYCRR. This is an 82-volume, loose-leaf publication that is supplemented semi-monthly with the text of new and amended rules.

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