Memorandum to Presidents

Date: September 20, 1976

From: Office of the University Counsel and Vice Chancellor for Legal Affairs

Subject: State Administrative Procedure Act

The State Administrative Procedure Act, copy attached, became effective on September 1, 1976 and is designed to insure that the rule-making, adjudicatory and licensing procedures used by State agencies are uniform and equitable. The Act does not apply to administrative actions taken by Community Colleges. As with most reforms intended to simplify and clarify the law, the Act will complicate certain of our past practices. For the most part, however, the Act affects regulatory agencies dealing with the public at large and exempts rules relating to the internal management of an agency.

The Act is divided into three substantive parts pertaining to rule-making, adjudication, and licensing. It appears that the University is not engaged in adjudicatory or licensing procedures within the meaning of the Act, and the great preponderance of University rule-making relates to internal matters. Accordingly, at the campus level, only the promulgation of traffic regulations and the adoption of supplemental rules for the maintenance of public order appear to fall within the terms of the Act. Both kinds of rules, of course, are adopted by the College Council.

Student conduct and behavior rules adopted by College Councils under the authority of Section 356 of the Education Law and Trustee regulations found at Part 500.2 of Title 8, Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are matters of internal management which affect only students and not the general public. Consequently, such rules need not be adopted, amended, suspended or repealed in accordance with the Act and need not be filed with the Secretary of State. However, supplemental rules for the maintenance of public order, adopted pursuant to Section 6450 of the Education Law and Trustee regulations found at 8 NYCRR 535.2 may affect students and members of the public as well. Accordingly, these rules fall within the Act and must conform to the provisions of Section 202(2).

Section 202(1) is inapplicable to the University. Section 202(2) describes the procedure required for University
rule-making by Councils in respect to traffic and supplemental public order rules. This subsection provides that no rule may be adopted or changed unless the University publishes notice of its proposed action in the State Bulletin at least twenty-one days before the action is taken. The section further requires that the public be afforded a means to make oral or written comments about the proposal before its enactment. Provision is also made for emergency rules. Upon the final adoption, amendment, suspension or repeal of any rules, the University must publish notice of its action in the State Bulletin.

College Councils which plan to adopt or amend supplemental public order or traffic rules should inform the University Counsel, who will arrange for publication of the proposed rule or rules in the State Bulletin. Unless another permissible alternative is suggested, the bulletin will advise that all written public comment should be directed to the Campus Chief Administrative Officer for consideration by the Council. Final action upon proposed rules must be deferred until twenty-one days after notice of the proposal has appeared in the State Bulletin. Those rules eventually adopted by Campus Councils and approved by the Board of Trustees will be filed with the Secretary of State by the University Counsel. The rule or rules become effective on the date of filing.

Section 204 of the State Administrative Procedure Act provides for an additional rule-making procedure which permits any person to petition the University for a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the University. Requests for declaratory rulings shall be addressed to the Chancellor pursuant to the following procedures established by the Board of Trustees:

PART 313

PROCEDURES FOR DECLARATORY RULINGS

Section 313.1 General Procedures

(a) Petitions for the discretionary issuance of a declaratory ruling concerning the applicability to any person, property, or state of facts of any rule or statute enforceable by the University shall be in writing and subscribed by the petitioner. The petitioner shall specify the applicable rule or statute and shall provide a complete statement of the facts and circumstances prompting the petition, together with a full disclosure of petitioner's interest. Any facts alleged in the petition shall be verified under oath by the
petitioner. Petitions shall be addressed to the Chancellor of the University by certified mail, return receipt requested. The returned post office receipt shall constitute proof of service, which shall be deemed effective on the day such petition is received.

(b) The University Counsel shall review such petitions and recommend responsive declaratory rulings or advise that an application should be declined as incomplete, ambiguous, inappropriate or unnecessary under the facts and circumstances recited in the petition. Declaratory rulings shall be reviewed and approved by the Chancellor and shall be reported to the Board of Trustees.

(c) Any declaratory ruling issued by the University shall be available for public inspection at the Office of the University Records Access Officer in accordance with Part 311 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Accordingly, the resolution of the Board provides that the Chancellor may decline to approve the issuance of a declaratory ruling unless appropriate and necessary, based upon a clear and unequivocal petition dealing with an actual exigency which requires clarification in the public interest.

Walter J. Relihan, Jr.

Walter J. Relihan, Jr.

Attachment

This memorandum addressed to:

Presidents, State-operated Campuses

Copies for information sent to:

Presidents, Community Colleges
Deans, Statutory Colleges
President Rose
Mr. Barlow
STATE ADMINISTRATIVE PROCEDURE ACT

Laws 1975, Chapter 167, § 1, Effective September 1, 1976

As amended to the close of the 1975 Legislature

Became a law June 3, 1975 (effective Sept. 1, 1976),
with the approval of the Governor. Passed,
three-fifths being present.

CHAPTER 82 OF THE CONSOLIDATED LAWS

Article Sec.
1. General Provisions ........................................ 100
2. Rule making .................................................. 201
3. Adjudicatory proceedings .................................. 301
4. Licenses ....................................................... 401
5. Public Inspection and publication ....................... 501
6. Representation ............................................... 601

ARTICLE 1—GENERAL PROVISIONS

Sec.
100. Legislative intent.
101. Short title.
102. Definitions.
103. Construction; severability.

§ 100. Legislative intent

The legislature hereby finds and declares that the administrative rule-making, adjudicatory and licensing processes among the agencies of state government are inconsistent, lack uniformity and create misunderstanding by the public. In order to provide the people with simple, uniform administrative procedures, an administrative procedure act is hereby enacted. This act guarantees that the actions of administrative agencies conform with sound standards developed in this state and nation since their founding through constitutional, statutory and case law. It insures that equitable practices will be provided to meet the public interest.

It is further found that in the public interest it is desirable for state agencies to meet the requirements imposed by the adminis-
§ 100 STATE ADMINISTRATIVE PROCEDURE ACT

trative procedure act. Those agencies which will not have to con-
form to this act have been exempted from the act, either specifi-
cally by name or impliedly by definition.
L.1975, c. 167, § 1.

Historical Note

Effective Date. Section 3 of L.1975, c. 167, provided: “This act
[enacting this chapter and amending Executive Law § 160] shall take
effect on the first day of September in the year next succeeding the year
in which it shall have become a law.”

§ 101. Short title

This chapter shall be known and may be cited as the “State
Administrative Procedure Act.”
L.1975, c. 167, § 1.

§ 102. Definitions

As used in this chapter,

1. “Agency” means the state or any state department, includ-
ing any board, bureau, commission, division, office, council, or
officer therein, or a public benefit corporation or public authority
at least one of whose members is appointed by the governor, au-
thorized by law to make rules or to make final decisions in adju-
dicatory proceedings but shall not include the governor, agencies
in the legislative and judicial branches, agencies created by inter-
state compact or international agreement, the division of mili-
tary and naval affairs to the extent it exercises its responsibility
for military and naval affairs, the division of state police, the
identification and intelligence unit of the division of criminal
justice services, the department of correctional services, the state
insurance fund, the unemployment insurance appeal board, the
workmen’s compensation board.

2. (a) “Rule” means (i) the whole or part of each agency
statement of general applicability or regulation or code that im-
plements or applies law, or prescribes the procedure or practice
requirements of any agency, including the amendment, suspen-
sion or repeal thereof and (ii) the amendment, suspension, re-
peal, approval or prescription for the future of rates, wages, se-
curity authorizations, corporate or financial structures or reor-
ganization thereof, prices, facilities, appliances, services or allow-
ances therefor or of valuations, costs or accounting, or practices
bearing on any of the foregoing whether of general or particular
applicability.
(b) Not included within paragraph (a) of this subdivision are:

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

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

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

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

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

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

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

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

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

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

L.1975, c. 157, § 1.

STATE ADMINISTRATIVE PROCEDURE ACT § 102
§ 103. Construction; severability

1. Except to the extent provided in paragraph (d) of subdivision one and in paragraph (c) of subdivision two of section two hundred two of this chapter, the provisions of this chapter shall not be construed to limit or repeal additional requirements imposed by statute or otherwise.

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

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

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

L.1975, c. 167, § 1.
ARTICLE 2—RULE MAKING

§ 201. Adoption of forms, instructions and procedures

Each agency shall adopt forms, instructions and procedures for implementing this article and make available to the public their nature and requirements.

L.1975, c. 167, § 1.

Library References

Administrative Law and Procedure C.J.S. Public Administrative Bodies § 381 et seq.

§ 202. Rule making procedure

1. Prior to the adoption, amendment, suspension or repeal of any rule as to which a hearing is required by any statute, an agency shall give notice, or cause such notice to be given, and hold a public hearing as follows:

   (a) The agency shall, within the time specified by any statute; or, if no time is specified then at least twenty-one days prior to the public hearing, (1) publish, or cause to be published, notice of such hearing in such manner as may be required by statute, and, when appropriate in the judgment of the agency, in such newspaper or newspapers of general circulation or, in such trade, industry or professional publications as the agency may select, and (2) notify, or cause to be notified, any person specified by any statute, and in addition, any person or agency filing written request, such request to be renewed yearly in December, for notice of hearings which may affect that person or agency, notification being by mail or otherwise in writing to the last address specified by the person or agency. The agency may, unless otherwise provided by statute, charge for such notice, a fee, which shall consist of the cost of preparation, handling and postage for the notice.

   (b) The agency shall also publish, or cause to be published, in the state bulletin notice of a hearing as soon as practicable. This requirement shall not preclude initiation of a hearing where notice consistent with paragraph (a) of this subdivision has been
§ 202 STATE ADMINISTRATIVE PROCEDURE ACT

given, provided however that in all situations there must be reasonable prior publication of notice.

(c) The notice shall (1) refer to the statutory authority under which the action is proposed, (2) give the time and place of the public hearing, (3) either state the express terms or indicate where the express terms may be obtained and describe the substance of the proposed rule, amendment, suspension, or repeal, or state the subjects and issues involved, and (4) include any additional matter required by any statute.

(d) Irrespective of the requirements of any other statute, if the agency finds that immediate adoption, amendment, suspension or repeal of a rule is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and public hearing would be contrary to the public interest, the agency may dispense with all or part of such requirements and adopt the rule, amendment, suspension, or repeal as an emergency measure. The agency's finding and a brief statement of the reason for its finding shall accompany the emergency measure. Unless otherwise provided by statute, such emergency measure shall not remain in effect for longer than sixty days unless within that time the agency gives notice and holds a public hearing as required in paragraphs (a) and (c) of this subdivision, and takes final action relating to the emergency measure.

(e) Upon the adoption, amendment, suspension or repeal of a rule of general applicability, the agency shall publish notice of the action taken in the state bulletin. The notice shall refer to the statutory authority under which the action was taken and shall include either the express terms or describe the substance of such action and where the express terms may be obtained.

2. Prior to the adoption, amendment, suspension or repeal of any rule of general applicability other than those subject to subdivision one of this section, an agency shall give, or cause to be given, notice and offer any person or other agency an opportunity to present data, views or arguments, as follows:

(a) The agency shall, within the time specified by any statute or, except if no time is specified then at least twenty-one days prior to the adoption, amendment, suspension or repeal of a rule, (1) publish, or cause to be published, notice of its proposed action in the state bulletin and in such other manner as may be required by statute, and, when appropriate in the judgment of the agency, in such newspaper or newspapers of general circulation or, in such trade, industry or professional publications as the agency may select, and (2) notify, or cause to be notified, any person
specified by any statute, and in addition, any person or agency filing written request, such request to be renewed yearly in December, for notice of proposed action which may affect that person or agency, notification being by mail or otherwise in writing to the last address specified by the person or agency. The agency may, unless otherwise provided by statute charge for such notice, a fee, which shall consist of the cost of preparation, handling and postage for the notice.

(b) The notice shall (1) refer to the statutory authority under which the action is proposed, (2) give the time and place of any public hearing, or state the manner in which data, views or arguments may be submitted to the agency by any person or agency, whether orally or in writing, (3) either state the express terms or indicate where the express terms may be obtained and describe the substance of the proposed rule, amendment, suspension or repeal, or state the subjects and issues involved, and (4) include any additional matter required by any statute.

(c) Irrespective of the requirements of any other statute, if the agency finds that it is necessary for the preservation of the public health, safety or general welfare to dispense with the requirements of notice and opportunity to present views on its proposed rule, amendment, suspension or repeal under the provisions of this subdivision, the agency may dispense with such requirements, or any part thereof, and adopt the rule, amendment, suspension, or repeal as an emergency measure. The agency's finding and a brief statement of the reasons for its finding shall accompany the emergency measure. Unless otherwise provided by statute, such emergency measure shall not remain in effect for longer than sixty days unless within that time the agency complies with paragraphs (a) and (b) of this subdivision, and takes final action relating to the emergency measure.

(d) Upon the adoption, amendment, suspension or repeal of a rule, the agency shall publish notice of the action taken in the state bulletin. The notice shall refer to the statutory authority under which the action was taken and shall include either the express terms or describe the substance of such action and where the express terms may be obtained.

3. Public hearings in rule making proceedings held pursuant to this section shall comply with any requirements imposed by any statute but shall not be subject to the provisions of this chapter governing adjudicatory proceedings.

4. This section does not relieve any agency from compliance with any statute requiring that its rules be filed with or approved by designated persons or bodies before they become effective.
§ 202 STATE ADMINISTRATIVE PROCEDURE ACT

5. No rule hereafter adopted is valid unless adopted in substantial compliance with this section, providing, however, that the inadvertent failure to mail notice to any person or agency as provided in this section shall not invalidate any rule adopted hereunder. A proceeding to contest any rule on the grounds of noncompliance with the procedural requirements of this section must be commenced within four months from the effective date of the rule.

§ 203. Filing; effective date

No rule of general applicability shall become effective until it is filed with the secretary of state, unless a later date is required by statute or is specified in the rule.
L.1975, c. 167, § 1.

§ 204. Declaratory rulings by agencies

On petition of any person, any agency may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. A declaratory ruling shall be binding upon the agency if stated by it in writing to be binding unless it is altered or set aside by a court. The agency may not retroactively change a valid declaratory ruling, but nothing in this section shall prevent an agency from prospectively changing any declaratory ruling. A binding declaratory ruling shall be made available to the public. A ruling so stated to be binding is subject to review in the manner provided for in article seventy-eight of the civil practice law and rules.
L.1975, c. 167, § 1.

§ 205. Right to judicial review of rules

Unless an exclusive procedure or remedy is provided by law, judicial review of rules may be had upon petition presented under article seventy-eight of the civil practice law and rules, or in an action for a declaratory judgment where applicable and proper. The agency shall be made a party to the proceedings. Such a special proceeding may not be maintained or a declaratory judgment rendered unless the petitioner has first requested the agency to pass upon the validity or applicability of the rule in question. Unless the agency acts upon such request within thirty
days of its filing, such request shall be deemed to have been denied. Nothing in this section shall be construed to grant or deny to any person standing to petition under article seventy-eight of the civil practice law and rules or to bring an action for a declaratory judgment or to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is properly asserted.

L.1975, c. 157, § 1.
§ 301 STATE ADMINISTRATIVE PROCEDURE ACT

ARTICLE 3—ADJUDICATORY PROCEEDINGS

Sec. 301. Hearings.
302. Record.
303. Presiding officers.
304. Powers of presiding officers.
305. Disclosure.
306. Evidence.

§ 301. Hearings

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

2. All parties shall be given reasonable notice of such hearing, which notice shall include (a) a statement of the time, place, and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and rules involved, where possible; (d) a short and plain statement of matters asserted. Upon application of any party, a more definite and detailed statement shall be furnished whenever the agency finds that the statement is not sufficiently definite or not sufficiently detailed.

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

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

L.1975, c. 167, § 1.

Library References

Administrative Law and Procedure C.J.S. Public Administrative Bodies C.J.S. Public Administrative Bodies § 114 et seq.

§ 302. Record

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

2. The agency shall make a complete record of all adjudicatory proceedings conducted before it. For this purpose, unless otherwise required by statute, the agency may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or electronic recording devices. Upon request made by any party upon the agency within a reasonable time, but prior to the time for commencement of judicial review, of its giving notice of its decision, determination, opinion or order, the agency shall prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy of the record and transcript or any part thereof to any party as he may request. Except when any statute provides otherwise, the agency is authorized to charge not more than its cost for the preparation and furnishing of such record or transcript or any part thereof, or the rate specified in the contract between the agency and a contractor if prepared by a private contractor.

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

L.1975, c. 167, § 1.

§ 303. Presiding officers

Except as otherwise provided by statute, the agency, one or more members of the agency, or one or more hearing officers designated and empowered by the agency to conduct hearings shall be presiding officers. Hearings shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding. Whenever a presiding officer is disqualified or it becomes impractical for him to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.

L.1975, c. 167, § 1.
§ 304 STATE ADMINISTRATIVE PROCEDURE ACT

§ 304. Powers of presiding officers

Except as otherwise provided by statute, presiding officers are authorized to:

1. Administer oaths and affirmations.
2. Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence and said subpoenas shall be regulated by the civil practice law and rules.
3. Provide for the taking of testimony by deposition.
4. Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.
5. Direct the parties to appear and confer to consider the simplification of the issues by consent of the parties.

L.1975, c. 167, § 1.

§ 305. Disclosure

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

L.1975, c. 167, § 1.

§ 306. Evidence

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

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

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

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

L.1975, c. 167, § 1.

§ 307. Decisions, determinations and orders

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

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

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

L.1975, c. 167, § 1.
§ 401. Licenses

1. When licensing is required by statute to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning adjudicatory proceedings apply.

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

3. No revocation, suspension, annulment, or withdrawal of any license, as the result of an adjudicatory proceeding, is lawful unless, prior to or simultaneously with the institution of such proceeding, the agency gave notice personally or by mail to the licensee of facts or conduct which warrant the intended action, nor unless the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered, effective on the date specified in such order or upon service of a certified copy of such order on the licensee, whichever shall be later, pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

L.1975, c. 107, § 1.

Library References

Licenses ¶20. C.J.S. Licenses §§ 34, 38, 39.
§ 501. Public inspection; availability of rules, orders, decisions, determinations and opinions; publication.

Each agency, either by itself or through the department of state, shall:

1. Make available for public inspection and cause all its rules of general applicability and all forms, instructions and procedures adopted or used by the agency to implement the requirements of this chapter to be published in pamphlets, looseleaf or other appropriate form in printed, mimeographed or other written manner, and make the publication available for distribution to any person on request. Except when any statute provides otherwise, the agency is authorized to charge not more than cost for each copy of the publication distributed upon request.

2. Make available for public inspection every final order, decision, determination or opinion resulting from either a rule making or an adjudicatory proceeding and the record upon which it was made, if any, unless otherwise provided by law.

L.1975, c. 167, § 1.
§ 601. Representation

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

L.1975, c. 167, § 1.

Library References

Administrative Law and Procedure § 474.

C.J.S. Public Administrative Bodies and Procedure § 137.
AN ACT

to amend the state administrative procedure act and repealing article five of such act and to amend the executive law, in relation to the filing of rules

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

Section 1. Subdivisions one, two and three of section one hundred two of the state administrative procedure act are hereby amended to read, respectively, as follows:

1. "Agency" means [the state or] any [state] department, [including any] board, bureau, commission, division, office, council, committee or officer [therein] of the state, or a public benefit corporation or public authority at least one of whose members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the governor, agencies in the legislative and judicial branches, agencies created by interstate compact or international agreement, the division of military and naval affairs to the extent it exercises its responsibility for military and naval affairs, the division of state police, the identification and intelligence unit of the division of criminal justice services, the department of correctional services, the state insurance fund, the unemployment insurance appeal board, the workmen's compensation board.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is old law to be omitted.
2. (a) "Rule" means (i) the whole or part of each agency statement, regulation or code of general applicability that implements or applies law, or prescribes the procedure or practice requirements of any agency, including the amendment, suspension or repeal thereof and (ii) the amendment, suspension, repeal, approval or prescription for the future of rates, wages, security authorizations, corporate or financial structures or reorganization thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs or accounting, or practices bearing on any of the foregoing whether of general or particular applicability.

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

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

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

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

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

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

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

§ 2. Paragraph (e) of subdivision one of section two hundred two of such act is hereby amended to read as follows:

(e) Upon the adoption, amendment, suspension or repeal of a rule of general applicability, the agency shall publish notice of the action taken in the state bulletin. The notice shall refer to the statutory authority under which the action was taken and shall include either the express terms or describe the substance of such action and where the express terms may be obtained.
§ 3. The opening paragraph of subdivision two of section two hundred two of such act is hereby amended to read as follows:

Prior to the adoption, amendment, suspension or repeal of any rule [of general applicability] other than those subject to subdivision one of this section, an agency shall give, or cause to be given, notice and offer any person or other agency an opportunity to present data, views or arguments, as follows:

§ 4. Subdivision five of section two hundred two of such act is hereby amended to read as follows:

5. [No rule hereafter adopted is valid unless] Each rule shall be adopted in substantial compliance with this section, providing, however, that the inadvertent failure to mail notice to any person or agency as provided in this section shall not invalidate any rule adopted hereunder. A proceeding to contest any rule on the grounds of noncompliance with the procedural requirements of this section must be commenced within four months from the effective date of the rule.

§ 5. Section two hundred three of such act is hereby amended to read as follows:

§ 203. Filing; effective date. No rule [of general applicability] shall become effective until it is filed with the secretary of state, unless a later date is required by statute or is specified in the rule. Each rule submitted for filing shall have attached thereto the certificate required under subdivision two of section one hundred two of the executive law.

§ 6. Section two hundred four of such act is hereby amended to read as follows:

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

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

§ 8. Subdivisions two and three of section three hundred one of such act are hereby amended to read, respectively, as follows:

2. All parties shall be given reasonable notice of such hearing, which notice shall include (a) a statement of the time, place, and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and rules involved, where possible; (d) a short and plain statement of matters asserted. Upon application of any party, a more definite and detailed statement shall be furnished whenever the agency finds that the statement is not sufficiently definite or not sufficiently detailed. The finding of the agency as to the sufficiency of definiteness or detail of the statement or its failure or refusal to furnish a more definite or detailed statement shall not be subject to judicial review. Any statement furnished shall be deemed, in all respects, to be a part of the notice of hearing.

3. All parties shall be afforded an opportunity to present written argument on issues of law [and policy] and an opportunity to present evidence and such argument on issues of fact, provided however that nothing contained herein shall be construed to prohibit an agency from allowing parties to present oral argument within a reasonable time. In fixing the time and place for hearings and oral argument, due regard shall be had for the convenience of the parties.
§ 9. Subdivision two of section three hundred four of such act is hereby amended to read as follows:

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

§ 10. Section four hundred one of such act is hereby amended to read as follows:

§ 401. Licenses. 1. When licensing is required by statute to be preceded by notice and opportunity for hearing, on the record, the provisions of this chapter concerning adjudicatory proceedings apply.

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

3. [No revocation, suspension, annulment, or withdrawal of any license, as the result of an adjudicatory proceeding, is lawful unless, prior to or simultaneously with the institution of such proceeding, the agency gave notice personally or by mail to the licensee of facts of conduct which warrant the intended action, nor unless the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.] If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered, effective on the date specified in such order or upon service of a certified copy of such order on the licensee, whichever shall be later, pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

§ 11. Article five of such act is hereby repealed and article six of such act is hereby renumbered to be article five, and section six hundred one thereof is hereby renumbered to be section five hundred one.
§ 12. Subdivision two of section one hundred two of the executive law, as amended by chapter three hundred five of the laws of nineteen hundred sixty-two, is hereby amended to read as follows:

2. Immediately upon adopting any new code, rule or regulation including any rule as defined in the state administrative procedure act, or any amendment to or repeal thereof, except such as relate solely to the organization or internal management of a department, board, bureau, authority, commission or other agency of the state, the original thereof shall be filed in the office of the department of state. Attached thereto shall be a certificate citing the statutory authority pursuant to which each such change or new code, rule or regulation was adopted, the date of adoption, and the date of publication in the state bulletin of the prior notice required under the provisions of the state administrative procedure act as well as the date and manner of publication of any additional prior notice required under any other statute. If the action taken shall be exempt from the provisions of the state administrative procedure act and if no other statutory notice requirement shall be applicable the certificate shall so state. Such certificate shall be signed by the head of the department, board, bureau, authority, commission, or other agency of the state, or if such head is a board or commission, by the chairman or secretary thereof, or, in lieu of such signatures, it may be signed by a person designated by such head or chairman aforementioned, provided such designation is made in writing, contains therein the signature of the person designated, and is filed with the department of state.

§ 13. This act shall take effect on the same day as chapter one hundred sixty-seven of the laws of nineteen hundred seventy-five, entitled "An Act in relation to rule making and adjudication by state administrative agencies, constituting chapter eighty-two of the consolidated laws and amending the executive law, in relation to the state bulletin".

Note.—Article five of the state administrative procedure act repealed hereby provided for publication of rules and other materials by an agency and for public inspection thereof and of orders, decisions or opinions resulting from either rule-making or an adjudicatory proceeding.