October 27, 2010
Vol. XXXII
Issue 43
Book 1 of 2

DEPARTMENT OF STATE
Division of Administrative Rules

NEW YORK STATE REGISTER

INSIDE THIS ISSUE:

- Incident Reporting in Chemical Dependency and Problem Gambling Treatment Provider Services
- The Protection of Children in Residential Facilities from Child Abuse and Neglect
- Assistance Program to Encourage Local Governments to Reassess on a Cyclical Basis

Guidance Documents
Notice of Availability of State and Federal Funds
Financial Reports

State agencies must specify in each notice which proposes a rule the last date on which they will accept public comment. Agencies must always accept public comment: for a minimum of 45 days following publication in the *Register* of a Notice of Proposed Rule Making or a Notice of Emergency Adoption and Proposed Rule Making for which full text was included in the Notice or posted on a state web site, or which is a consensus rule or a rule defined in SAPA § 102(2)(a)(ii); or for a minimum of 60 days following publication in the *Register* of a Notice of Proposed Rule Making or a Notice of Emergency Adoption and Proposed Rule Making for which a summary of the text of the rule was included in the Notice and the full text of which was not published on a state web site; and for 30 days after publication of a Notice of Revised Rule Making in the *Register*. When a public hearing is required by statute, the hearing cannot be held until 45 days after publication of the notice, and comments must be accepted for at least 5 days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies must accept comment through the close of business on the next succeeding workday.

For notices published in this issue:

– the 60-day period expires on December 26, 2010
– the 45-day period expires on December 11, 2010
– the 30-day period expires on November 26, 2010

DAVID A. PATERSON
GOVERNOR

NEW YORK STATE DEPARTMENT OF STATE

For press and media inquiries call:
(518) 474-0050

For ***State Register*** production, scheduling and subscription information
call: (518) 474-6957
E-mail: adminrules@dos.state.ny.us

For legal assistance with ***State Register*** filing requirements
call: (518) 474-6740
E-mail: dos.dl.inetcounsel@dos.state.ny.us

The ***New York State Register*** is now available on-line at:
www.dos.state.ny.us/info/register.htm

*The **New York State Register** (ISSN 0197 2472) is published weekly. Subscriptions are $80 per year for first class mailing and $40 per year for periodical mailing. The **New York State Register** is published by the New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001. Periodical postage is paid at Albany, New York and at additional mailing offices.*

POSTMASTER: Send address changes to the Department of State, Division of Administrative Rules, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001

printed on recycled paper

REVIEW REQUIREMENTS FOR NEW AND REVISED REGULATIONS

Executive Order No. 20 established a system of executive branch review of proposed state agency regulations by the Governor's Office of Regulatory Reform (GORR). The following is a brief description of the review requirements imposed by Executive Order 20 for new and revised rules.

Prior to submitting a proposed or revised rule for publication in the *State Register*, an agency must submit it to GORR along with any required regulatory impact statement; regulatory flexibility analysis for small businesses; rural area flexibility analysis; any cost-benefit, risk assessment and job retention analysis; or the results of any negotiated rule making or policy dialogue.

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) 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 and 202-bb, relating to regulatory impact statement, regulatory flexibility analysis for small businesses and rural area flexibility analysis.

If GORR concludes that any of the criteria is not met, it may require the agency to undertake additional analyses, including a cost-benefit analysis or risk assessment.

Once the information provided to GORR is complete, GORR recommends to the Secretary to the Governor, Counsel to the Governor, Deputy Secretary to the Governor and Director of the Division of the Budget whether the agency may submit the rule making for publication in the *State Register*.

After publication, GORR again reviews the rule for any new information or factors. If GORR concludes that any such new factors exist, the agency is notified of any deficiencies within 45 days of publication of the proposed rule (30 days of publication of a revised rule).

GORR reviews the agency response to determine whether it adequately addresses the deficiencies. If the response is adequate, the agency may proceed with the rule making. If the agency response is inadequate, GORR may notify the agency that it may not adopt the rule. This notification may then be confirmed or modified by the Governor's Senior Advisors.

Agencies should submit proposed and substantially revised rules in MS Word format via E-mail, together with their required statements and analyses, in their entirety, to:

Regs@GORR.State.NY.US

Questions and comments may be directed to Counsel's Office at the address and telephone number below:

Amelia F. Stern, Counsel
Governor's Office of Regulatory Reform
P.O. Box 2107
Empire State Plaza, Bldg. 1
Albany, NY 12220-0107
(518) 473-0620

NEW YORK STATE
REGISTER

Be a part of the rule making process!

The public is encouraged to comment on any of the proposed rules appearing in this issue. Comments must be made in writing and must be submitted to the agency that is proposing the rule. Address your comments to the agency representative whose name and address are printed in the notice of rule making. No special form is required; a handwritten letter will do. Individuals who access the online *Register* (www.dos.state.ny.us) may send public comment via electronic mail to those recipients who provide an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings.

To be considered, comments must reach the agency before the proposed rule is adopted. The law provides for a minimum 45-day public comment period after publication in the *Register* of every Notice of Proposed Rule Making for which full text was included or posted on a state web site, or which is a consensus rule or a rule defined in SAPA § 102(2)(a)(ii); a minimum 60day public comment period after publication in the *Register* of a Notice of Proposed Rule Making for which a summary of the text of the rule was included in the Notice and the full text of which was not published on a state web site; and a 30-day public comment period for every Notice of Revised Rule Making. If a public hearing is required by statute, public comments are accepted for at least five days after the last such hearing. Agencies are also required to specify in each notice the last date on which they will accept public comment.

When a time frame calculation ends on a Saturday or Sunday, the agency accepts public comment through the following Monday; when calculation ends on a holiday, public comment will be accepted through the following workday. Agencies cannot take action to adopt until the day after public comments are due.

The Administrative Regulations Review Commission (ARRC) is charged with the task of reviewing newly proposed regulations to examine the issues of compliance with legislative intent, impact on the economy, and impact on affected parties. In addition to sending comments or recommendations to the agency, please do not hesitate to transmit your views to ARRC:

Administrative Regulations Review Commission
State Capitol
Albany, NY 12247
Telephone: (518) 455-5091 or 455-2731

Each paid subscription to the *New York State Register* includes one weekly issue for a full year and four "Quarterly Index" issues. The Quarterly is a cumulative list of actions that shows the status of every rule making action in progress or initiated within a calendar year.

The *Register* costs $80 a year for a subscription mailed first class and $40 for periodical (second) class. Prepayment is required. To order, send a check or money order payable to the NYS Department of State to the following address:

NYS Department of State
One Commerce Plaza
99 Washington Avenue
Suite 650
Albany, NY 12231-0001
Telephone: (518) 474-6957

KEY: (P) Proposal; (RP) Revised Proposal; (RC) Revised Proposal/Continuation; (E) Emergency; (EP) Emergency and Proposal; (A) Adoption; (AA) Amended Adoption; (W) Withdrawal

Individuals may send public comment via electronic mail to those recipients who provided an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings. Choose pertinent issue of the *Register* and follow the procedures on the website (www.dos.state.ny.us)

Rule Making Activities

Aging, Office for the

1 / Expanded In-Home Services for the Elderly Program (EISEP) Consumer Directed In-Home Services (P)

Alcoholism and Substance Abuse Services, Office of

3 / Incident Reporting in Chemical Dependency and Problem Gambling Treatment Provider Services (E)

Audit and Control, Department of

6 / Submission and Approval of State Authority Contracts to the Comptroller (A)

Canal Corporation, New York State

11 / Snowmobiling on Canal Lands (P)

Children and Family Services, Office of

12 / The Protection of Children in Residential Facilities from Child Abuse and Neglect (E)

Education Department

14 / Distinguished Educators (P)

17 / Waivers from Corporate Practice Restrictions for Certain Entities to Provide Certain Services Under Title 8 of the Education Law (P)

21 / Registration Requirements for Teacher Education Programs and Special Education Certification Requirements for Grades 5 Through 12 (P)

25 / Teacher Tenure Determinations (P)

Labor, Department of

25 / Restrictions on the Consecutive Hours of Work for Nurses As Enacted in Section 167 of the Labor Law (EP)

Lottery, Division of the

30 / Operation of the LOTTO Game and the New York Lottery Subscription Program (E)

32 / Operation of the LOTTO Game and the New York Lottery Subscription Program (W)

32 / Operation of the LOTTO Game and the New York Lottery Subscription Program (P)

Mental Health, Office of

33 / Mental Health Services - General Provisions; Community Based Service System for Children; Operation of Outpatient Programs (A)

Motor Vehicles, Department of

35 / To Eliminate the NYTEST Emissions Program in the New York Metropolitan Region on January 1, 2011 (P)

People with Developmental Disabilities, Office for

36 / HCBS Waiver Community Habilitation Services (A)

Public Service Commission

37 / Corning's Request to Discontinue the Regulatory Matrix (P)

38 / Petition for the Submetering of Electricity (P)

38 / Waiver of Gas Tariff Provision (P)

38 / Utility Access to Ducts, Conduit Facilities and Utility Poles (P)

State, Department of

39 / Code of Ethics and Standards of Practice for Home Inspectors (A)
Taxation and Finance, Department of
40 / Assistance Program to Encourage Local Governments to Reassess on a Cyclical Basis (E)
Workers' Compensation Board
42 / Group Self-Insurance (P)
Hearings Schedule for Proposed Rule Makings / 48
Action Pending Index / 49

Guidance Documents
99 / Mental Health, Office of

Notice of Availability of State and Federal Funds
101 / Criminal Justice Services, Division of
101 /
101 / NYS Homes and Community Renewal
102 / NYS Homes and Community Renewal
102 / Housing Trust Fund Corporation

Miscellaneous Notices/Hearings
105 / Notice of Abandoned Property Received by the State Comptroller
105 / Public Notice
107 / Sale of Forest Products

Financial Reports / 109