

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Calculation of Benefits for Restored Members

I.D. No. AAC-31-13-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: This is a consensus rule making to amend section 354.6 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11 and 311

Subject: Calculation of benefits for restored members.

Purpose: To conform the existing regulation to certain time frames and benefit calculation options set forth in current law.

Text of proposed rule: § 354.6 Calculation of benefits for restored members.

Upon retirement of a restored member, benefits shall be payable as follows:

(a) If the member has not earned at least [five]two years of member service credit subsequent to restoration of membership, there shall not be a recalculation of benefits. Rather, the original retirement allowance under the option previously established shall be reinstated, and member contributions made since such restoration shall be refunded to the member by the Retirement System. The original retirement date shall remain applicable for the purposes of determining eligibility for post-retirement death benefits.

(b) If the member has earned at least [five]two years of member service

credit after restoration, such member shall, *at his or her option*, be eligible to retire with [the]either of the following benefit calculations:

(1) *The member shall be credited with all member service earned subsequent to restoration to membership, and receive a retirement allowance which shall consist of the actuarial equivalent of the pension which the member was receiving immediately prior to the last restoration to membership, plus a pension based upon the member service credit earned subsequent to restoration to membership. Such latter pension shall be computed as if he or she were a new member when he or she last became a member.*

(2) The total service credited at the time of the earlier retirement may, at the member's option, again be credited, in addition to all member service earned subsequent to restoration to membership, if the member returns to the Retirement System the actuarial equivalent of the amount of retirement benefits received, plus interest at the rate of five percent per annum. In the event such amount is not so repaid, such actuarial equivalent shall be deducted from the subsequent retirement allowance.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

This is a consensus rulemaking proposed for the purpose of conforming the existing regulation to certain timeframes and benefit calculation options set forth in current law. These technical amendments relate to the calculation of benefits for restored members and it has been determined that no person is likely to object to the adoption of the rule as written.

Chapter 136 of the Laws of 2003 amended RSSL § 441(b). Prior to amendment, RSSL § 441(b) required a retiree returning to service to render 5 years of service before the retiree would be entitled to receive an additional benefit based upon his/her additional service. Chapter 136 amended RSSL § 441(b) so as to reduce the period of required service from 5 years to 2 years.

The amendment to RSSL § 441(b) also benefits retirees who retired under RSSL Article 15. This is because Article 15 has no provision comparable to RSSL § 441(b). Rather, RSSL § 614(a) requires the System to apply the rules of the earlier tiers to retirees under Article 15. Since the rule has been liberalized, the liberalization applies to RSSL Article 15 retirees as well. Hence, members retiring under RSSL Article 15 and later returning to service only have to render 2, not 5, years of additional service in order to receive an additional benefit for service subsequent to their initial retirement.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Edgecombe Residential Treatment Facility

I.D. No. CCS-21-13-00001-A

Filing No. 751

Filing Date: 2013-07-10

Effective Date: 2013-07-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 100.96(b); and repeal of section 100.96(c) of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Edgecombe Residential Treatment Facility.

Purpose: To add work release and residential treatment for females to Edgecombe Residential Treatment Facility.

Text or summary was published in the May 22, 2013 issue of the Register, I.D. No. CCS-21-13-00001-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@doccs.ny.gov

Assessment of Public Comment

The agency received no public comment.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Temporary Release Program

I.D. No. CCS-31-13-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of section 1900.6(b) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112, 852 and 855

Subject: Temporary Release Program.

Purpose: To indicate that an inmate may appeal the decision of a facility Superintendent to deny a temporary release program application.

Text of proposed rule: The Department of Corrections and Community Supervision is amending subdivision 1900.6(b) of 7 NYCRR as indicated below:

Section 1900.6. Appeal process.

(a) An inmate may appeal the following kinds of negative decisions:

- (1) point scores;
- (2) decision of TRC (including presumptive CASAT); and
- (3) decision of central office reviewer.

(b) Inmates with a low-point score can only appeal the scoring of their applications to central office. Inmates with a low-point score and who have received an open date may appeal the scoring of their application to central office. Inmates with a low-point score and an open date who have been referred to the TRC can appeal on grounds 1-3, above, provided each ground is relevant to the case. *An inmate may appeal a denial by the superintendent by submitting form 4145 and any pertinent information to the director of central office temporary release programs. An inmate has ten working days from the date of the notice of denial to submit his or her intent to appeal a decision of the superintendent. A perfected appeal must be received within 30 days of the disapproval decision.* [Nonstatutory denials by the superintendent must be referred directly to the director of TRP for an automatic commissioner review. No appeal is necessary.]

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, Harriman State Campus - Building 2 - 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority

Sections 112, 852 and 855 of Correction Law. Section 112 empowers the Commissioner of DOCCS to promulgate rules and regulations that are deemed necessary in order to maintain safe, secure and orderly operations within the Department that are not in conflict with any state statutes. Section 852 of Correction Law specifically empowers the Commissioner to promulgate rules and regulations to govern the Department's temporary release programs with consideration for the safety of the community and the welfare of the inmate. Section 855 of Correction Law lists the rules and regulations that provide the procedures for the temporary release of inmates.

2. Legislative Objective

By vesting the Commissioner with the rulemaking authority as provided for in these sections of Correction Law, the legislature intended the Com-

missioner to promulgate such rules and regulations that provide fair and reasonable inmate eligibility criteria, application processing and release procedures for temporary release programs that are consistent with the Department's mission to enhance public safety by providing programs and services that address the needs of inmates so they can return to their communities better prepared to lead successful and crime-free lives.

3. Needs and Benefits

This proposed rulemaking was determined to be necessary in order to reduce the administrative costs and burden that is associated with the automatic review of denials made by the facility Superintendent of inmate temporary release applications. Due to current Department staffing and limited resources, the automatic review of these denials is creating an unrealistic burden on staff to conduct the reviews in a timely manner. This rule does not limit an inmate's ability to appeal such denial to Central Office, it simply places the impetus on the inmate to make the choice to submit an appeal if they choose to do so.

4. Costs

a. To agency, state and local government: No discernable costs are anticipated.

b. Cost to private regulated parties: None. The proposed rule changes do not apply to private parties.

c. This cost analysis is based upon the fact that the rule change is being made to cut down on administrative costs associated with the review of all temporary release program denials. No additional procedures or new staff are necessary to implement the proposed changes.

5. Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules.

6. Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

7. Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

8. Alternatives

DOCCS considered the alternative of not promulgating this rule. However, DOCCS decided that this rule making was important in order to attempt to reduce burden on staff that conduct the reviews and the associated administrative costs.

9. Federal Standards

There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance Schedule

The Department of Corrections and Community Supervision will achieve compliance with the proposed rules immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal is merely amending an internal procedure whereby an inmate must decide whether they wish to submit an appeal to a Superintendent's denial of their temporary release program application.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal is merely amending an internal procedure whereby an inmate must decide whether they wish to submit an appeal to a Superintendent's denial of their temporary release program application.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal is merely amending an internal procedure whereby an inmate must decide whether they wish to submit an appeal to a Superintendent's denial of their temporary release program application.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Limited Credit Time Allowances

I.D. No. CCS-31-13-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Addition of Part 290 to Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 803-b

Subject: Limited Credit Time Allowances.

Purpose: To promulgate rules that will codify DOCCS requirements and procedures for offenders to earn the Limited Credit Time Allowance.

Text of proposed rule: The Department of Corrections and Community Supervision is promulgating a new regulation Part 290 Limited Credit Time Allowances to 7 NYCRR as follows:

PART 290

LIMITED CREDIT TIME ALLOWANCES

290.1 Purpose.

Certain inmates serving either a determinate or indeterminate sentence for a crime that is not a merit eligible offense as defined in Correction Law Section 803, may be eligible to earn a six-month Limited Credit Time Allowance (LCTA) against their sentences pursuant to Correction Law Section 803-b, provided that they have achieved certain significant programmatic accomplishments, have not committed a serious disciplinary infraction or maintained an overall poor institutional record, and have not filed any frivolous lawsuits. In the case of an inmate serving a sentence with a maximum term of life for an eligible A-I felony, the six-month LCTA benefit is subtracted from the minimum period to establish the inmate's LCTA date. In the case of all other LCTA eligible offenses, the LCTA benefit is subtracted from the conditional release date to establish the inmate's LCTA date. An LCTA benefit is a privilege to be earned by the inmate and no inmate has the right to demand or require that any such allowance be granted. This Directive sets forth the policy and procedures for granting or withholding an LCTA benefit.

290.2 Eligibility.

An inmate must satisfy all of the criteria set forth in subdivisions 290.2(a) through 290.2(d) below to be eligible for an LCTA benefit.

(a) Eligibility by Crime: An inmate is eligible for an LCTA benefit if:

(1) He or she IS NOT serving a sentence for murder in the first degree;

(2) He or she IS NOT serving a sentence for an offense defined in Article 130 of the Penal Law;

(3) He or she IS NOT serving a sentence for an attempt or conspiracy to commit such offense, and

(4) He or she IS serving an indeterminate sentence for a non-drug A-I felony, such as murder in the second degree;

(5) He or she IS serving a determinate or indeterminate sentence for a violent felony offense as defined in Subdivision 1 of Penal Law Section 70.02, or

(6) He or she IS serving a determinate or indeterminate sentence for an offense defined in Article 125 of the Penal Law.

(b) To be Eligible. An inmate cannot have committed a "serious disciplinary infraction" or "maintained an overall poor institutional record" during the current term of incarceration. This means that an inmate cannot have received a recommended loss of good time sanction within the five (5) year period preceding the LCTA date. Inmates serving maximum life terms will be considered reviewable when there are no recommended loss of good time sanctions within the five (5) years prior to the review date, rather than within the five (5) years prior to their LCTA date. Any recommended loss of good time that occurred earlier will be separately reviewed by the facility LCTA Committee. Furthermore, an inmate's overall disciplinary history will be subject to review relative to date, substance and number of incidents.

(c) Frivolous Lawsuit. An inmate must not have filed an action, proceeding or claim against a State Agency Officer or employee that was found to be frivolous pursuant to:

(1) Section 8303 of the Civil Practice Law and Rules, or

(2) Rule 11 of the Federal Rules of Civil Practice.

(d) Program Criteria. An inmate must be successfully pursuing his or her most recent recommended Earned Eligibility Plan (EEP)/Program Plan and must complete at least one of the nine significant program accomplishments listed below during the current term of incarceration. Programming standards for LCTA are consistent with those applied to Earned Eligibility, Merit Time and Presumptive Release reviews, whereas, if an inmate is removed from a recommended program due to unsatisfactory program efforts or due to discipline, he or she must return to that program and establish a period of successful program effort in order to be considered for LCTA.

(1) A minimum of two years successful participation in college programming.

College participation is defined as two years cumulative participation in an institution of higher education that is accredited, provides transcripts, credit-bearing courses that can lead to a degree or certificate and are transferrable to other institutions of higher learning. The LCTA College criteria will be satisfied if at least one of the following two criteria is accomplished:

(i). Successful completion of an Associates or Bachelors Degree from an accredited college while serving the current term of incarceration.

(ii). Two years cumulative participation in an accredited college program during the current term of incarceration; having earned a minimum of 24 credits and having participated in college for a minimum of four semesters.

(2) A Masters of Professional Studies degree issued at Sing Sing CF.

Successful completion of the Masters of Professional Studies Program (New York Theological Seminary) at Sing Sing Correctional Facility.

(3) A minimum of two years successful participation as an Inmate Program Associate (IPA).

The IPA must have completed the Inmate Program Associate Training and have served for two years at one module a day consecutively * in the IPA title during this term or an aggregate consisting of consecutive time in a retired title and the IPA title.

Or, the IPA must have completed the Inmate Program Associate Training and have served for two years at one module a day consecutively * in one of the following retired titles, prior to September, 2011, during this term:

(i). Academic Teacher Aide

(ii). Vocational Teacher Aide

(iii). Chaplain Aide

(iv). Program Aide II

(v). Transitional Services Director

(vi). Casework Supervisor

(vii). ART/Transitional Services Facilitator

(viii). HIV/AIDS Peer Educators

*The exceptions to the consecutive criteria involve the following: Inmates were removed from the program: (a) to complete a recommended program for EEP/Program Plan purposes, or (b) due to a break in assignment through no fault of their own, e.g. transfer, court trip, program reduction, or closure AND go on to participate for a total of two years at one module a day in a retired title or in the Inmate Program Associate title during this term.

An IPA who does not hold an IPA position for more than one year, or has had a break in service of one year or greater, or has an unsuitable disciplinary record as specified in the IPA Policy and Procedure Handbook, will be required to be rescreened for participation and repeat the full IPA training program.

(4) Certification for the NYS Department of Labor for successful participation in an apprenticeship program. Attainment of a NYS Department of Labor apprenticeship certification during this term.

(5) A minimum of two years successful work as an Inmate Hospice Aide.

Hospice Aides must have completed a Hospice Aide training program and have served in the capacity of a Hospice Aide for two (2) consecutive years.*

*The exceptions to the consecutive criteria involve the following. Inmates were removed from the program: (a) to complete a recommended program for EEP/Program Plan purposes, or (b) due to a break in assignment through no fault of their own, e.g., transfer, court trip, program reduction or closure.

(6) A minimum of two years successful participation in the Puppies Behind Bars Program.

An inmate must have participated in the Puppies Behind Bars Program for a minimum of 24 months as a puppy handler or alternate puppy handler AND earned job title 875 Dog Trainer.

(7) Successfully worked in the Division of Correctional Industries Optical Program for a minimum of two years and received a certification as an Optician from the American Board of Opticianry.

Successfully completed vocational training and worked in various areas of fabrication for a minimum of two years. Must have taken and passed the American Board of Opticianry exam for certification.

(8) Received an asbestos handling certificate from the Department of Labor and a minimum of eighteen months work in the Division of Correctional Industries Asbestos Abatement Program as a Hazardous Materials Removal Worker or a Hazardous Materials Removal Group Leader.

Successfully completed a 32-hour training program to earn an asbestos handling certificate from the Department of Labor. Upon completion of the training program, successfully worked in the title of either Hazardous Materials Removal worker or a Hazardous Materials Removal Group Leader for a minimum of 18 months.

(9) Successfully completed the course curriculum and passed the minimum competency screening process performance exam for Sign Language Interpreter and a minimum of one year of work as a Sign Language Interpreter for deaf inmates.

Successfully completed the course curriculum of *Signing Naturally Level I and II*. Must have taken and passed the course exams with a score of 80% or better. Must have taken and passed the *Minimum Competency Screening Process (MCSP)* exam and earned a MCSP certificate. Upon receipt of the MCSP certificate, must have successfully worked as a *Sign Language Interpreter* for a minimum of one year.

290.3 EFFECT OF LCTA ON THE SENTENCE.

In the case of an eligible A-I inmate or persistent offender serving an indeterminate sentence with a maximum life term, such inmate may be eligible for release on parole six months before his or her parole eligibility date. In the event such an eligible inmate has appeared before his/her Initial Parole Board, been given a reappearance date and thereafter receives an LCTA certificate, then that information will be forwarded to the Parole Board, which can then carefully weigh this achievement at the inmate's next parole reappearance hearing.

In the case of any other eligible inmate who is serving either a determinate or indeterminate sentence, such inmate may be eligible for an LCTA conditional release six months before the regular conditional release date.

290.4 APPLICATION AND APPEAL PROCESS.

The Department's Central Office computer identifies those inmates at each facility who presently are eligible and reviewable for a possible LCTA approval. An otherwise eligible inmate may be considered for LCTA approval when he or she is within seven (7) months of his or her LCTA conditional release date. However, eligible inmates will only be screened for reviewability when they have been in the Department's custody for two (2) years. On a monthly basis, each facility, through its computer capability, will print the list of those inmates who have been determined to be both eligible and suitable to apply for the LCTA benefit. The name of an otherwise eligible inmate will not appear on the LCTA list if such inmate had a recommended loss of good time sanction within the five-year period prior to his or her LCTA date. The Deputy Superintendent for Program Services, or designee, will forward the LCTA list to the facility law library. The law library officer will provide a Form #4120, "Application for Limited Credit Time Allowance," to any interested and eligible inmate whose name appears on the LCTA list. The application is a two-sided document.

It is the sole responsibility of the eligible inmate to complete an LCTA application and submit it to his or her assigned Offender Rehabilitation Coordinator. The Offender Rehabilitation Coordinator will review the application in accordance with the disciplinary evaluation criteria and the program evaluation criteria.

A separate review by the Limited Credit Time Allowance Committee will be required in any case where the inmate received a recommended loss of good time sanction for an incident that occurred more than five years prior to such inmate's LCTA date.

Any application that is denied at the facility level may be appealed by the inmate to the Commissioner's Office within 30 days of receipt. If the denial is based upon the inmate's disciplinary record, it shall be forwarded to the Director of Special Housing/Inmate Disciplinary Programs, as the Commissioner's designee. If the denial is based upon a failure to satisfy program requirements, the appeal shall be forwarded to the Director of Guidance and Counseling, as the Commissioner's designee.

An application that is approved through all levels of review at the facility must then be submitted for final review by Central Office. The decision of Central Office either to approve or disapprove the LCTA application is final. An inmate may not further appeal an LCTA denial by Central Office.

The Commissioner may revoke, at any time, LCTA credit for any disciplinary infraction committed by the inmate or any failure to continue to pursue his or her Earned Eligibility Plan/Program Plan.

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, The Harri-man State Campus - Building 2, 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority

Sections 112 of Correction Law empowers the Commissioner of DOCCS to promulgate rules and regulations that are deemed necessary in order to maintain safe, secure and orderly operations within the Department that are not in conflict with any state statutes. Section 803-b of Correction Law authorizes the Commissioner to allow for Limited Credit

Time Allowances for offenders serving indeterminate or determinate sentences that meet specified eligibility requirements.

2. Legislative Objective

By vesting the Commissioner with this rulemaking authority the legislature intended the Commissioner to promulgate such rules and regulations that are consistent with the Department's mission to enhance public safety by providing programs, services and incentives that address the needs of offenders so they can return to their communities better prepared to lead successful and crime-free lives.

3. Needs and Benefits

This proposed rulemaking was determined to be necessary since this regulation is of general statewide applicability and provisions within the statute specifically require filing of regulations. The Limited Credit Time Allowance provides certain offenders serving a sentence for a crime that is not a merit eligible offense with the potential for a modest earlier release if they satisfy the eligibility requirements and the Department determines the earlier release is appropriate.

4. Costs

a. To agency, state and local government: None.

b. Cost to private regulated parties: None. The proposed rule changes do not apply to private parties.

c. This cost analysis is based upon: The application of the associated procedures will cause the Department to incur minimal costs due to the creation of two new forms, which will be offset by the savings realized from the earlier release of approved offenders.

5. Paperwork

There are two new reports, an application and an appeal form, that have been created and incorporated into the Department's corresponding internal management policy directive.

6. Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

7. Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

8. Alternatives

DOCCS considered the alternative of not promulgating this rule. However, DOCCS decided that this rule making was important in order for staff, offenders and the public to understand the Limited Credit Time Allowance definitions and eligibility criteria as defined in Correction Law.

9. Federal Standards

There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance Schedule

The Department of Corrections and Community Supervision will achieve compliance with the proposed rules immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. The application of the associated procedures will cause the Department to incur minimal costs due to the creation of two new forms, which will be offset by the savings realized from the earlier release of approved offenders.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. The application of the associated procedures will cause the Department to incur minimal costs due to the creation of two new forms, which will be offset by the savings realized from the earlier release of approved offenders.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. The application of the associated procedures will cause the Department to incur minimal costs due to the creation of two new forms, which will be offset by the savings realized from the earlier release of approved offenders.

Department of Economic Development

EMERGENCY RULE MAKING

Excelsior Jobs Program

I.D. No. EDV-31-13-00002-E

Filing No. 752

Filing Date: 2013-07-10

Effective Date: 2013-07-10

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Parts 190-196 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 17; L. 2011, ch. 61; L. 2010, ch. 59

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Excelsior Jobs Program which was created by Chapter 59 of the Laws of 2010 and amended by Chapter 61 of the Laws of 2011 and Chapter 68 of the Laws of 2013. The Excelsior Jobs Program provides job creation and investment incentives to firms that create and maintain new jobs or make significant financial investment. The Excelsior Jobs Program is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. The current regulations to administer the Excelsior Jobs Program expire July 10, 2013. It is imperative that the administration of this Program continues so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now. This emergency rule is necessary because, in addition to allowing for the continued administration of the Program, it also changes certain key definitions in order to broaden participation in the Program and ensure accountability. Immediate adoption of this rule will enable the State to begin achieving its economic development goals.

Section 356 of the Economic Development Law expressly authorizes the Commissioner of Economic Development to promulgate regulations on an emergency basis.

Subject: Excelsior Jobs program.

Purpose: Administer the Excelsior Jobs Program.

Substance of emergency rule: The regulation creates new Parts 190-196 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Excelsior Jobs Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment. In this emergency rule making, the definition of "net new jobs" has been amended to clarify the fact that the "net new job" minimum eligibility requirement for participation in the Excelsior Tax Credit program means net new job creation above a base level of employment. The definition of "new media" has been amended to include post production film projects and the term "distribution center" now allows processing and repackaging of goods directly to consumers. Finally, the definition of "regionally significant project" has been revised to ensure that it mirrors the statutory definition.

2) The regulation creates the application and review process for the Excelsior Jobs Program. In order to become a participant in the Program, an applicant must submit a complete application and agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently decertified for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the Excelsior Jobs Program for such location or locations; (d) providing, if requested by the Department, a plan outlining the schedule for meeting job and investment

requirements as well as providing its tax returns, information concerning its projected investment, an estimate of the portion of the federal research and development tax credits attributable to its research and development activities in New York state, and employer identification or social security numbers for all related persons to the applicant.

3) Applicants must also certify that they are in substantial compliance with all environmental, worker protection and local, state and federal tax laws.

4) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits. The preliminary schedule of benefits may be amended by the Commissioner provided he or she complies with the credit caps established in General Municipal Law section 359.

5) The regulation sets forth the eligibility criteria for the Program. The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and development in this state. When determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity.

6) In addition, a business entity operating predominantly in manufacturing must create at least twenty-five net new jobs; a business entity operating predominately in agriculture must create at least ten net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least one hundred net new jobs; a business entity operating predominantly in scientific research and development must create at least ten net new jobs; a business entity operating predominantly in software development must create at least ten net new jobs; a business entity creating or expanding back office operations or a distribution center in the state must create at least one hundred fifty net new jobs; a business entity must be a Regionally Significant Project; or a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least fifty full-time job equivalents, and must demonstrate that its benefit-cost ratio is at least ten to one (10:1).

7) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations and may not owe past due state or local taxes. Also, the regulation explicitly excludes: a not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity from eligibility for this program. This emergency rule making now clarifies that the exclusion of business services from eligibility refers to licensed professional services.

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the

proposed project aligns with the regional strategic priorities of the respective region.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed.

10) A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

11) The regulation next delineates the calculation of the tax credits as described in statute. The Excelsior Jobs Program Credit is the product of gross wages and 6.85 percent. The Excelsior Research and Development Tax Credit is fifty percent of the participant's federal research and development tax credit. The Excelsior Real Property Tax Credit is based on the value of the property after improvements have been made. A participant may claim both the Excelsior Investment Tax Credit and the investment tax credit for research and development property. In addition, the current tax benefit period for all credits is ten years.

12) The tax credit components are refundable. If a participant fails to satisfy the eligibility criteria in any one year, it loses the ability to claim the credit for that year.

13) Pursuant to the amended statute, the regulation authorizes utilities to offer excelsior job program rates for gas or electric services to participants in the program for up to ten years.

14) The regulation requires participants to keep all relevant records for their duration of program participation plus three years.

15) The regulation requires a participant to submit a performance report annually and states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

16) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or failing to meet the minimum job or investment requirements of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

17) The regulation lays out the appeal process for participant's who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at <http://www.esd.ny.gov/BusinessPrograms/Excelsior.html>.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 7, 2013.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 356 of the Economic Development Law authorizes the Commissioner of Economic Development to promulgate regulations to implement the Excelsior Jobs Program and expressly authorizes the Commissioner to adopt such regulations on an emergency basis.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance in creating competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars, including the manufacturing and financial industries, and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program encourages the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the Excelsior Jobs Program. Section 365 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act.

The current regulations for the Excelsior Jobs Program were last published as an emergency rule making in the May 1, 2013 State Register and expire July 10, 2013. This emergency rule making will allow for the continued administration of the Excelsior Jobs Program, which is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that the administration of this Program continues so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

In addition to allowing for the continued administration of the Program, this emergency rule making also changes certain key definitions in order to broaden participation in the Program and ensure accountability. The definition of "net new jobs" has been amended to clarify the fact that the "net new job" minimum eligibility requirement for participation in the Excelsior Tax Credit program means net new job creation above a base level of employment. The definition of "new media" has been amended to include post production film projects and the term "distribution center" now allows processing and repackaging of goods directly to consumers. Finally, the definition of "regionally significant project" has been revised to ensure that it mirrors the statutory definition.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Excelsior Jobs Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Excelsior Jobs Program. This emergency rule does not impose any costs to local governments for administration of the Excelsior Jobs Program.

PAPERWORK:

The emergency rule requires businesses choosing to participate in the Excelsior Jobs Program to establish and maintain complete and accurate books relating to their participation in the Excelsior Jobs Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The emergency rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions. The Department conducted outreach with respect to this rulemaking. Specifically, it contacted the Citizens Budget Commission, Partnership for New York City, the Buffalo Niagara Partnership and the New York State Economic Development Council and received comments from them. The Department carefully considered all comments made with respect to the regulation. Certain comments were incorporated into the rulemaking while others deemed inappropriate were not.

FEDERAL STANDARDS:

There are no federal standards in regard to the Excelsior Jobs Program. Therefore, the emergency rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes record-keeping requirements on all businesses (small, medium and large) that choose to participate in the Excelsior Jobs Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Excelsior Jobs Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Excelsior Jobs Program would be information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Excelsior Jobs Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive financial assistance. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Excelsior Jobs Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development (“DED”) estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Excelsior Jobs Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant capital investment in the State during these difficult economic times, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-31-13-00005-E

Filing No. 755

Filing Date: 2013-07-15

Effective Date: 2013-07-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; L. 2009, ch. 57

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State’s taxpayers, particularly in light of New York’s current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow Department to continue implementing Zones reforms and adopt changes that would enhance program’s strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into “distinct and separate contiguous areas.”

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of “cost-benefit analysis” and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise (“QEZE”) Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development (“the Commissioner”). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute’s deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesigna-

tion by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at: www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 12, 2013.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany, NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are

eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

EMERGENCY RULE MAKING

Rules Governing Valuation of Life Insurance Reserves

I.D. No. DFS-10-13-00008-E

Filing No. 763

Filing Date: 2013-07-15

Effective Date: 2013-07-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4240 and 4517

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: This amendment to Regulation 147 contains changes to the reserve requirements on universal life with secondary guarantee policies. The Department has been concerned about compliance and reserve adequacy issues with respect to product designs involving an imbalance between the guarantees and reserves held. The National Association of Insurance Commissioners ("NAIC") attempted to address this issue with revisions to Actuarial Guideline 38. To prevent potential substantial reserve increases for in-force business, a bifurcated approach was adopted, which provides for separate reserve methodologies for in-force business and prospective business. The Guideline provides that for universal life with secondary guarantee business written between July 1, 2005 and December 31, 2012, the reserves will be determined using a principles-based approach, as adopted by an NAIC Committee in 2012. For business issued after January 1, 2013, the reserves will be calculated using a formulaic-based approach, until such time that principles-based reserving is enacted through a change in law.

These standards have already been adopted by the NAIC through its Accounting Practices and Procedures Manual. Since New York has a separate regulation addressing this subject matter, the revised standards are not automatically adopted and need to be adopted through an amendment to Regulation 147. This amendment incorporates the NAIC revisions identified in Actuarial Guideline 38, thus resulting in consistency between the NAIC's and New York's rules and promoting regulatory uniformity across the U.S. Companies domiciled in states that do not adopt these changes by December 31, 2012 will be holding reserves at a different level relative to companies domiciled in states that have adopted these changes.

For insurers that have not followed the intent of the current regulation, adoption of this amendment may increase reserves on business issued between July 1, 2005 and December 31, 2012 of New York authorized life insurers. For insurers that have followed the intent of the current regulation, reserves may decrease.

Insurers subject to this regulation must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the next quarterly statement is August 15, 2013. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner. It is essential that this regulation be adopted on an emergency basis until such time as it can be adopted on a permanent basis.

For all of the reasons stated above, an emergency adoption of this fourth amendment to Regulation 147 is necessary for the general welfare.

Subject: Rules governing valuation of life insurance reserves.

Purpose: Prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates.

Substance of emergency rule: The Fourth Amendment to Insurance Regulation 147 provides revised reserve standards for universal life with secondary guarantee policies.

Section 98.9(c)(2) is amended to reference new subparagraphs (ix) and (x), which provide revised reserve standards for universal life with secondary guarantee policies.

Section 98.9(c)(2)(viii)(b)(2) is amended to change the applicability dates for applying lapse rates from policies issued on or after January 1, 2007 to before January 1, 2014 to policies issued on or after January 1, 2007 to before January 1, 2013.

Section 98.9(c)(2)(viii)(e) is amended to change the applicability dates for applying lapse rates in the calculation of the net single premium from policies issued on or after January 1, 2007 to before January 1, 2014 to policies issued on or after January 1, 2007 to before January 1, 2013.

Section 98.9(c)(2)(viii)(h)(2) is amended to change the applicability dates, when there is a reduction for surrender charges, from policies issued on or after January 1, 2007 to before January 1, 2014 to policies issued on or after January 1, 2007 to before January 1, 2013.

Section 98.9(c)(2)(viii)(j) is amended to change the applicability dates for universal life with secondary guarantee policies when a stand-alone asset adequacy analysis is required.

A new subparagraph (ix) is added to section 98.9(c)(2) to prescribe reserve standards for certain universal life with secondary guarantee policies that were issued on or after July 1, 2005 to before January 1, 2013. This amendment affects universal life with secondary guarantee products, with or without a shadow account, with multiple sets of interest rates or other credits, or multiple sets of cost of insurance, expense, or other charges that may become applicable to the calculation of the secondary guarantee measures in any one year.

A new subdivision (x) is added to section 98.9(c)(2) to prescribe revised reserve standards for universal life with secondary guarantee policies issued on or after January 1, 2013. The steps for calculating the reserve are specified in section 98.9(c)(2)(x)(a) – (i). Section 98.9(c)(2)(x)(j) adds Actuarial Opinion and Insurer Representation requirements to declare that the policies appropriately fit one of the design categories described in this subdivision. Additionally, if reserves are calculated under Method II, a report that describes the analytical review that was performed with respect to premium payment patterns must also be provided.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-10-13-00008-P, Issue of March 6, 2013. The emergency rule will expire September 12, 2013.

Text of rule and any required statements and analyses may be obtained from: Frederick Andersen, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-5462, email: frederick.andersen@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate the Fourth Amendment to Insurance Regulation 147 (11 NYCRR 98) derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services.

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law section 1304 requires every insurer authorized under the Insurance Law to transact the kinds of insurance specified in Insurance Law section 1113(a)(1)-(3) to maintain reserves as necessary on account of the insurer's policies, certificates and contracts.

Insurance Law section 1308 describes when reinsurance is permitted, and the effect that reinsurance will have on an insurer's reserves.

Insurance Law section 4217 requires the Superintendent to annually value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding policies and contracts of every life insurer doing business in New York. Insurance Law section 4217(a)(1) specifies that the Superintendent may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods used in the calculation of the reserves. Reserving has not historically included lapse as a factor in calculations, because it was not relevant to traditional forms of life insurance contracts; therefore, section 4217 does not expressly include references to lapses. However, the development of new types of life insurance that were not contemplated at the time section 4217 was enacted may cause lapses to be relevant in reserve calculations in certain instances.

Insurance Law section 4217(c)(6)(C) provides that reserves - according to the commissioner's reserve valuation method for life insurance policies that provide for a varying amount of insurance or requiring the payment of varying premiums - shall be calculated by a method consistent with the principles of section 4217(c)(6).

Insurance Law section 4217(c)(6)(D) permits the Superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions of section 4217 to such policies and contracts as the Superintendent deems appropriate.

Insurance Law section 4217(c)(9) requires that, in the case of any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurer based on estimates of future experience, or in the case of any plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in sections 4217(c)(6) and 4218, the reserves that are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and must be computed by a method that is consistent with the principles of sections 4217 and 4218, as determined by the Superintendent.

Insurance Law section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioner's reserve valuation method, the minimum reserve required for the policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy, or the reserve calculated by the commissioner's reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which the modified net premium exceeds the actual premium.

Insurance Law section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract. Section 4240(d)(7) states that the Superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of section 4240.

Insurance Law section 4517(b)(2) provides, with respect to fraternal benefit societies, that reserves according to the commissioner's reserve valuation method for life insurance certificates that provide for a varying amount of benefits, or requiring the payment of varying premiums, shall be calculated by a method consistent with the principles of subsection (b).

2. Legislative objectives: One of the principal goals of the Legislature in enacting the Insurance Law is maintaining the solvency of insurers doing business in New York. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies that are authorized to do business in New York State to hold reserve funds in amounts that are sufficient in relation to the obligations made to policyholders. At the same time, an insurer benefits when it has adequate capital for company uses such as expansion, product innovation, and other forms of business development.

3. Needs and benefits: Interpretation of the previous standards for universal life with secondary guarantee products has not been consistent among the insurance industry and regulatory authorities across the U.S. In an effort to provide greater clarification of the standards, the National Association of Insurance Commissioners ("NAIC") revised Actuarial Guideline 38. This amendment to Regulation 147 incorporates the NAIC's revisions to Actuarial Guideline 38, which is intended to establish regulatory uniformity across the U.S. Insurers domiciled in states that do not adopt these changes by December 31, 2012 will be holding reserves at different levels relative to insurers domiciled in states that have adopted these changes, creating solvency concerns and an unlevel playing field among insurers.

The amendment, which is based on the previous NAIC Model, addresses the present situation, experienced nationwide, of insurers calculating reserves based on their various interpretations of the current regulation. The differing interpretations have resulted in some insurers setting imprudently low reserves and raising concerns about solvency and the ability of those insurers to meet their obligations. At the same time, those

insurers that have set inappropriately low reserves have greater access to unrestricted funds that can be used for other purposes, creating an unlevel playing field to the disadvantage of those insurers that have properly set their reserves. This amendment will make certain that all insurers use the same approach to calculating reserves and ensure that proper reserves will be set, and insurers will not be under-reserved.

4. Costs: Costs to insurers and fraternal benefit societies that are authorized to do business in New York that are impacted by this amendment could be significant. The cost would include the actual modifications to existing computer software to incorporate the new methodologies for in-force and prospective business, as well as the testing and implementation of the changes to the software. Some insurers may find it necessary to redesign the policies that are offered for sale to fit one of the policy designs addressed in the regulation.

Insurers that had not been complying with the full intent of the current regulation may find it necessary to increase reserves for policies issued between July 1, 2005 and December 31, 2012 upon adoption of the amendment, which provides greater clarification of the regulation's requirements. Insurers that have complied with the current regulation may find that their reserves have decreased.

Cost estimates range from \$100,000 to \$1.1 million nationwide for impacted insurers based on information provided by the Life Insurance Council of New York, Inc. Many insurers, however, would be incurring these costs in any event since they must comply with the same requirements imposed by other states in which they are licensed. The changes to reserving methodology contained in the regulation are also being adopted in other states to conform with the NAIC revisions to the Actuarial Guideline. After an insurer has modified its computer systems and developed new policy forms to comply with the regulation, only minimal additional costs should be anticipated.

The amendment is expected to result in the need for significant training of Department staff. The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: For policies issued between January 1, 2007 and December 31, 2012, the amendment does not alter the regulation's requirement that insurers annually prepare a stand-alone Actuarial Memorandum that sets forth the reserve analysis performed on the business. However, insurers subject to Section 98.9(c)(2)(ix) (respecting certain policies issued July 1, 2005 through December 31, 2012) are made subject to the requirements of Part 98 (Insurance Regulation 172), which provides for the adoption of the NAIC Accounting Practices & Procedures Manual ("NAIC Manual"). Under the 2013 edition of the NAIC Manual, such insurers must submit an additional Actuarial Memorandum to document compliance with the NAIC Manual's valuation of reserves requirements. Also, for policies issued on or after January 1, 2013, the regulation requires, at the time of filing or approval of a new product, each insurer to file with the Superintendent an Actuarial Opinion and an Insurer Representation made with respect to the applicable policy forms. Those insurers that use Method II, as described in section 98.9(c)(2)(x)(a)(2) of the amendment to Regulation 147, must submit a report that briefly describes the analytical review performed, the insurer's conclusions following the analytical review, and whether any additional premium payment patterns, other than those required, were tested as a result of the review.

7. Duplication: The regulation does not duplicate any existing law or regulation.

8. Alternatives: The only alternative considered by the Department was to not adopt the recent changes to the NAIC model regulation or the provisions in the new version of Actuarial Guideline 38. This would create an unlevel playing field for insurers, and reserves calculated by New York domestic insurers would be held at a different level than reserves held by non-domestic insurers.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: This amendment to the regulation applies to 2012 annual statements due March 1, 2013 and statements filed thereafter. This amendment provides revised reserve standards for calculating reserves on universal life with secondary guarantee policies. The NAIC conducted outreach on a national level. In New York, the Department engaged in discussions with the affected insurers' trade association, the Life Insurance Council of New York (LICONY). The Department was notified by LICONY on December 21, 2012 that its members support the amendment to Regulation 147. Since the standards contained in the amendment were already adopted by the NAIC, insurers should have adequate time to comply with the regulation.

Regulatory Flexibility Analysis

1. Small businesses: The Department finds that this amendment will not impose any adverse economic impact on small businesses and will not

impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurers and fraternal benefit societies that are authorized to do business in New York State, none of which comes within the definition of "small business" provided in section 102(8) of the State Administrative Procedure Act. The Department reviewed filed Reports on Examination and Annual Statements of authorized insurers and fraternal benefit societies and concludes that none of these entities comes within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments: The amendment does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and fraternal benefit societies covered by the amendment do business in every county in this state, including rural areas as defined in State Administrative Procedure Act ("SAPA") section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are separate reporting and compliance requirements for policies issued between July 1, 2005 and December 31, 2012 and for policies issued on or after January 1, 2013. Additionally, for policies issued on or after January 1, 2013, the regulation requires insurers to file an Actuarial Opinion with the Superintendent.

3. Costs: Costs to insurers and fraternal benefit societies that are authorized to do business in New York State that are impacted by this amendment could be significant. The costs would include the actual modifications to existing computer software to incorporate the new methodologies for in-force and prospective business, as well as the testing and implementation of the changes to the software. Some insurers may find it necessary to redesign the policies that are offered for sale to fit one of the policy designs addressed in the regulation. Insurers that had not been complying with the full intent of the current regulation may find it necessary to increase reserves for policies issued between July 1, 2005 and December 31, 2012 upon adoption of the amendment, which provides greater clarification of the regulation's requirements. Insurers that have complied with the current regulation may find that their reserves have decreased.

Cost estimates range from \$100,000 to \$1.1 million nationwide for impacted insurers based on information provided by the Life Insurance Council of New York, Inc. Many insurers, however, would be incurring these costs in any event since they must comply with the same requirements imposed by other states in which they are licensed. The changes to reserving methodology contained in the regulation are also being adopted in other states to conform with the NAIC revisions to Actuarial Guideline 38. After an insurer has modified its computer systems and developed new policy forms to comply with the regulation, only minimal additional costs should be anticipated.

The amendment is expected to result in the need for significant training of Department staff. The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact: The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: The NAIC conducted outreach on a national level. In New York, the Department engaged in discussions with the affected insurers' trade association, the Life Insurance Council of New York (LICONY). The Department was notified by LICONY on December 21, 2012 that its members support the amendment to Regulation 147.

Job Impact Statement

The Department finds that this amendment should have no impact on jobs and employment opportunities. This amendment sets standards for setting life insurance reserves for insurers and fraternal benefit societies. Insurers should not need to hire additional employees or independent contractors to comply with these new standards.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

New York State Gaming Commission

EMERGENCY RULE MAKING

Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds

I.D. No. RWB-08-13-00006-E

Filing No. 756

Filing Date: 2013-07-12

Effective Date: 2013-07-12

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 4043.2(e)(9), (g), (i) and 4043.4(b) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(1), (19), 128 and 902(1)

Finding of necessity for emergency rule: Preservation of public safety and general welfare.

Specific reasons underlying the finding of necessity: The Gaming Commission has determined that immediate adoption of these rule amendments is necessary for the preservation of the public safety and general welfare and that compliance with the requirements of subdivision 1 of Section 202 of the State Administrative Procedure Act would be contrary to the public interest.

On September 27, 2012, the New York State Task Force on Racehorse Health and Safety released its report on the investigation of 21 equine fatalities at the 2011-12 fall and winter meet at Aqueduct Racetrack. The Task Force determined that there may have been opportunities to prevent 11 of those 21 fatalities. The amendments contained in this emergency rulemaking are based upon the findings and recommendations of the Task Force.

The Board originally adopted emergency rules to address the administration of clenbuterol and corticosteroids. These emergency rules were requested by the industry for the purpose of protecting the horses and athletes involved in thoroughbred racing and must be implemented on an emergency basis.

Given the danger of a horse breaking down, and the safety threat presented to both the horse and the jockeys racing in close proximity, these rule amendments are necessary to protect the safety of human and equine athletes. Thoroughbred horses travel over the racetrack at an average speed of approximately 40 miles per hour, sometimes exceeding that average as they sprint to the finish or sprint to gain positional advantage. An unsound horse or a horse influenced by the administration of certain medications may be forced to race beyond its limits and result in a fatal breakdown, oftentimes in a sudden or uncontrollable breakdown.

This rule is also necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. Public confidence in both the process of racing and in pari-mutuel wagering system is necessary for the sport to survive, and with it the jobs and revenue generated in support of government.

Subject: Implementation of substantive changes and procedures pertaining to equine drugs and reporting requirements for thoroughbreds.

Purpose: To protect the health and safety of thoroughbred race horses, jockeys and exercise riders.

Text of emergency rule: Subdivision (g) of section 4043.2 of 9 NYCRR is amended as follows:

§ 4043.2. Restricted use of drugs, medication and other substances.

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

- (1) acepromazine;
- (2) albuterol;
- (3) atropine;
- (4) butorphanol;
- [(5)] clenbuterol;
- [(6)](5) detomidine;
- [(7)](6) glycopyrrolate;

- [(8)](7) guaifenesin;
- [(9)](8) hydroxyzine;
- [(10)](9) isoxsuprine;
- [(11)](10) lidocaine;
- [(12)](11) mepivacaine;
- [(13)](12) pentoxifylline;
- [(14)](13) phenytoin;
- [(15)](14) pyrilamine;
- [(16)](15) xylazine.

[They] Such substances may not be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such [96 hours] 96-hour period.

Paragraph 9 of subdivision (e) of section 4043.2 of 9 NYCRR is amended as follows:

(9) hormones [and steroids] (e.g., [testosterone, progesterone, estrogens,] chorionic gonadotropin[, glucocorticoids])[, except in conjunction with joint aspiration as restricted in subdivision (i) of this section; the use of anabolic steroids is governed by section 4043.15 of this Part];

Subdivision (i) of section 4043.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse [which has had a joint aspirated (in conjunction with a steroid injection)] may not race for [at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race] the following periods of time:

(1) for at least five days following a systemic administration of a corticosteroid;

(2) for at least seven days following a joint injection of a corticosteroid; and

(3) for at least 14 days following an administration of clenbuterol.

In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such time periods.

New subdivision (b) is added to section 4043.4 of 9 NYCRR to read as follows:

(b) Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the Board, by the trainer to the Board within 48 hours of the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. The reports shall be accessible to the examining veterinarian for the purpose of assisting with pre-race veterinary examinations.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. RWB-08-13-00006-P, Issue of February 20, 2013. The emergency rule will expire September 9, 2013.

Text of rule and any required statements and analyses may be obtained from: John Googas, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@gaming.ny.gov

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The Gaming Commission is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(1), 104(1), 104(19), 122, 128, and 902(1). Under sections 103(1) and 104(1), the Gaming Commission has general jurisdiction over all horse racing and pari-mutuel wagering activities in the state and the corporations and associations and persons engaged therein, including the authority to regulate the use of drugs that can manipulate race performance, and is responsible for the supervision, regulation, and administration thereof. Section 104(19) authorizes the Gaming Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 provides that all rule-making of the former New York State Racing and Wagering Board shall continue in force and effect as rule-making of the Gaming Commission until duly modified or abrogated by such commission. Section 128 authorizes the new Gaming Commission to promulgate regulations on an emergency basis by methods outside of standard administrative procedural requirements to ensure continuity through readopting current emergency rules of the Gaming Commission. Section 902(1) prescribes that a state college within New York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings. It also authorizes the Gaming Commission to promulgate any rules and regulations necessary to implement its equine drug testing program and to impose substantial administrative penalties on anyone who races drugged horses.

2. Legislative objectives: To enable the New York State Gaming Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: These rule amendments have been identified by the New York Task Force on Racehorse Health and Safety as emergency measures required to protect the safety and health of thoroughbred race horses and jockeys in New York State. The New York State Gaming Commission has reviewed these recommendations and has endorsed them for emergency adoption.

The Task Force was formed in 2012 after 21 equine deaths occurred between November 2011 and March 2012. The 21 deaths were more than double the expected frequency rate. The Task Force's investigation revealed troubling aspects with the way horses are examined and managed in this state and found that the health and safety of racehorses and jockeys will be improved by reducing the use of legal anti-inflammatory medications in the time after the horse is entered to race.

The amendments to Gaming Commission Rule 4043.2(i) are necessary to control the administration of corticosteroids to thoroughbred horses. These amendments are necessary for the health and safety of both the horse and the jockeys. The withdrawal periods in the rule were prescribed explicitly by the Task Force and are necessary to provide clear guidance as to when administration should be discontinued for the purposes of testing and for the safety of the horse. The intra-articular use of corticosteroids can mask the inflammatory changes ordinarily associated with joint disease, and can frustrate the pre-race clinical examination. For such reasons, regulation of joint injections of corticosteroids is appropriate. The term "intra-articular" has been revised to "joint injection" in the rule text to more accurately reflect a vernacular of the trade.

The Task Force also identified the need to tighten controls over the use of clenbuterol, which is currently permitted as a 96-hour rule under the Gaming Commission's rules. It is a potent bronchodilator that was introduced to race horse care and treatment to prevent respiratory infections in horses, an ailment that is associated with a race horse's training and participation at race meetings. Some trainers have indicated that their horses look better and have increased appetites when treated with clenbuterol. The report stated that in addition to its pharmacological effect on the respiratory tract, clenbuterol mimics anabolic steroids in that it increases muscle and decreases fat in cattle, pigs, poultry and sheep. The report stated that there is a belief that illegally compounded clenbuterol has been used in thoroughbred horses as an alternative to prohibited anabolic steroids. The Task Force found: "It was abundantly clear to the Task Force that while the NYSRWB's time limit regarding clenbuterol was being followed, the medication is in common use as a substitute for anabolic steroids and not for the legitimate therapeutic purpose for which it is intended." The amendments will replace the existing 96-hour time restriction, prompting the change to subdivision (g) of 4043.2 of 9 NYCRR to remove any reference to clenbuterol, with a 14-day restriction to be found in a new paragraph (3) of subdivision (i) of 9E NYCRR.

The Gaming Commission also amended paragraph (9) of subdivision (e) of 4043.2 of 9 NYCRR to remove any references to steroids. This was not a recommendation by the Task Force, but in light of the Gaming Commission's existing rule limiting the administration of anabolic steroids (Rule 4043.15) and the restrictions placed on corticosteroids in this rulemaking, the Gaming Commission believes that Rule 4043.2(e)(9) should contain no reference to steroids, in order to avoid confusion.

The Task Force reported: "The failure of trainers to report intra-articular injections as required prevented the NYRA veterinarians from identifying a pattern of redundant... treatments that had the potential to misrepresent the true clinical condition of a horse." Therefore, in order to ensure proper notification, the Gaming Commission amends Section 4043.4 of 9 NYCRR, which is commonly known as the "Trainer's Responsibility Rule," to require that a trainer submit a corticosteroid joint injection record to the Gaming Commission within 48 hours of treatment so that examining veterinarians will have access to that information as part of the pre-race examinations. This amendment will improve the quality of pre-examinations, provide the Gaming Commission with timely notice of any potential ailments, notify the racing office at the racetrack when horses are ineligible to enter upcoming races because of a corticosteroid joint injection within seven days of the race, and ensure that documentation is available in the event a horse's fitness comes into question. In response to input from the New York Thoroughbred Racing Association, the Gaming Commission previously added the new 9 NYCRR 4043.4(b), authorizing trainers to delegate the reporting responsibility to the treating veterinarians.

These emergency rules certainly have had a positive impact on racing and should be continued. Since December 26, 2012, when the emergency rules took effect, there were only nine equine racing fatalities during the 2012-13 race meet at Aqueduct (all surfaces) compared to 23 that occurred from December 26, 2011 through April 22, 2012 (the last day of racing at Aqueduct before moving to Belmont). Based on a rate of 1,000 starters, there were 4 equine racing fatalities for every 1,000 horses start-

ing after December 26, 2011 at Aqueduct (before moving to Belmont) compared to 1.9 equine racing fatalities per 1,000 starters from December 26, 2012 to the time Belmont opened on April 27, 2013, which is a 53 percent decrease in equine racing fatalities since enforcement of these emergency rules at Aqueduct. This result was predicted by the Task Force, when it recommended that these emergency rules be adopted immediately and permanently. Such result was also recognized by the former New York State Racing and Wagering Board, when it authorized a first re-adoption of these rules and proposed them as permanent rules. More recently, Gaming Commission staff has affirmed the effectiveness of these emergency rules to reduce equine racing fatalities. The positive trend has continued during the Belmont Park 2013 Spring/Summer Meet, with only two equine racing fatalities and a rate of 0.5 per 1,000 starts from April 26 through July 7, 2013 (the meet ends on July 14, 2013); compared to 10 equine racing fatalities and a rate of 2.3 per 1,000 starts during the Belmont Park 2012 Spring/Summer Meet.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs for the New York Drug Testing and Research Program will be substantial. The cost for conducting administration trials necessary for Cortisone Testing for five corticosteroids will be \$45,000. The cost of related laboratory testing of samples for corticosteroids is \$18,000 per year. The cost of trial administrations of clenbuterol will be \$11,000. The related laboratory testing of clenbuterol samples is \$5,000 per year.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will require the New York State Gaming Commission to develop a filing system for corticosteroid reporting.

There will be no costs to local government because the New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel horse racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Gaming Commission relied on its experience in collecting information and based upon its experience in the equine drug testing program. The costs associated with clenbuterol and corticosteroid testing was provided directly from the New York Drug Testing and Research Program.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers will be required submit paperwork to the Gaming Commission in a manner prescribed by the Gaming Commission.

7. Duplication: None.

8. Alternatives: These rule amendments are based upon the finding and recommendations of the Task Force and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: This rule will be implemented upon submission to the Department of State as a second 60-day extension, the first having been filed with the Department of State on March 13, 2013, to an original emergency rulemaking that was published in the December 26, 2012 State Register. The Notice of Proposed Rule-Making to make these into permanent rules has been published in the February 20, 2013 State Register.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

As is evident by the nature of this rulemaking, this will not have an adverse affect on jobs or rural areas. This proposal concerns the restricted administration of certain drugs to thoroughbred race horses, the testing procedures to ensure compliance with those restrictions, and reporting of the administration of certain drugs. These medications – corticosteroids and clenbuterol – are currently permitted and will continue to be permitted but under different administration schedules. These schedules will have no impact on jobs or rural areas. This amendment is intended to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State. This will not adversely impact rural areas or jobs or local governments and does not require a Rural Area Flexibility Statement or Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel

I.D. No. HLT-07-13-00020-A

Filing No. 754

Filing Date: 2013-07-11

Effective Date: 2013-07-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 2.59, 405.3, 415.19, 751.6, 763.13, 766.11 and 793.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225, 2800, 2803, 3612 and 4010

Subject: Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel.

Purpose: Require hosp, DT and Cs, nursing home, home care and hospice personnel to wear a surgical or procedure mask if not vaccinated for Influenza.

Text or summary was published in the February 13, 2013 issue of the Register, I.D. No. HLT-07-13-00020-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Assessment of Public Comment

The Department received 14 public comments; eleven were opposed to the regulation, two supportive, and one recommended mandatory influenza vaccination for healthcare personnel (HCP) but did not address the issue of masks. Eleven comments were from professional organizations: CareGivers, District Council 37 American Federation of State, County & Municipal Employees (AFSCME), Empire State Association of Assisted Living (ESAAL), American Council on Science and Health (ACSH), New York State Nurses Association (NYSNA), Home Care Association of New York State (HCA), New York State Association of County Health Officials (NYSACHO), Civil Service Employees Union (CSEA), LeadingAge, Genesee Region Home Care Association (Genesee Region HCA), New York Committee for Occupational Safety and Health (NYCOSH). One comment was from the New York City Department of Health and Mental Hygiene (NYCDOHMH). Two comments were from private individuals. The comments were categorized into six groups.

There is a lack of supportive evidence on mask use to prevent influenza transmission; use alternate means to prevent transmission.

(CareGivers, NYSNA, CSEA, LeadingAge, Genesee Region HCA, NYCOSH, District Council 37 AFSCME, Private Individual)

Commenters suggested that the proposed regulations are contrary to Centers for Disease Control and Prevention (CDC) and Occupational Safety and Health Administration (OSHA) recommendations on mask use and the hierarchy of controls. One stated that evidence is lacking that mask use will reduce influenza transmission and noted that CDC states that no studies definitively show that masks prevent influenza transmission. Another commenter stated that CDC recommends that patients with symptoms wear masks, but HCP wear N95 respirators.

Commenters suggested alternative approaches to prevent transmission: mandatory education; focus on community vaccination to develop herd immunity; requiring hospitals to provide free, voluntary influenza vaccinations; visitation restrictions; cohorting patients exhibiting influenza-like illness with immunized staff; adequate sick leave for HCP; promoting hand hygiene and cough etiquette; strict housekeeping measures; and engineering, workplace practices, and administrative controls.

One commenter suggested that influenza vaccine has low efficacy and so all persons, regardless of vaccination status, should be required to wear masks if any are. A commenter noted that shedding may occur before symptoms and that “selective” use of masks might not limit transmission. One commenter questioned the importance of spread by asymptomatic workers, and one noted that HCP mask wear will not control transmission by visitors. Finally, a commenter suggested the possibility of masks becoming a vector of infection.

Response

Although a study directly addressing the efficacy of masks to prevent transmission by HCP has not been done, the Department has analyzed related evidence and drawn reasonable inferences to formulate its policy: In the absence of vaccination, requiring HCP and others in close proximity to patients to wear masks is the best way to prevent influenza transmission, in addition to routine measures already in place such as hand hygiene.

CDC recommends use of masks by potentially infectious persons to help contain respiratory secretions. That principle would apply to unvaccinated HCP who are infected with influenza and potentially contagious but not yet symptomatic, as well as those HCP who are working while being infected with a mild case which is not recognized as influenza. The Infectious Diseases Society of America also recommends that unvaccinated HCP wear masks.

The Department agrees that “selective” mask wear—that is, only requiring mask wear by those HCP who are diagnosed with influenza—would not prevent transmission. Therefore, all unvaccinated HCP are required to wear masks.

Many of the alternative approaches suggested to prevent influenza transmission are already in use. Messaging to HCP around influenza prevention is common. Despite education, HCP influenza immunization rates remain unacceptably low.

Influenza transmission from HCP to patients does occur and, although vaccine efficacy may be low in some years and populations, vaccine generally provides some protection against HCP transmitting influenza. Similarly, mask wear provides some protection against HCP transmitting influenza. The goal is to reduce the risk of transmission via either method.

Infected visitors might spread influenza, and facilities and agencies have developed visitation policies. HCP, who typically move from patient to patient and therefore have more opportunity to infect multiple patients, are the focus of this regulation.

The rule is burdensome for healthcare facilities and personnel (CareGivers, NYSNA, HCA, LeadingAge, Genesee Region HCA, ESAAL)

Several commenters stated that the cost of implementing mask wear is higher than estimated by the Department and noted the need for frequent mask changes. Commenters stated that requiring masks constituted an unfunded mandate and suggested reimbursement to cover costs. A commenter expressed concern that challenges from unions might present additional burdens, and another stated that required documentation is excessive, particularly name, address, and date of vaccination when given by an outside provider. One commenter suggested that the Department expand the pediatric vaccination reporting system rather than create a new system.

Response

Although there was general agreement on cost per mask, commenters calculated higher overall costs than estimated by the Department. However, in most settings the cost should be less than one dollar per shift per unvaccinated worker, which is a very small proportion of the budget of covered facilities and agencies. Costs can be decreased by encouraging vaccination of all eligible, willing personnel. From a health system perspective, fewer cases of influenza among HCP and fewer instances of transmission to patients may decrease costs.

Parties covered by this regulation already must maintain a health record for employees with information such as rubella status and tuberculosis testing results. It should not be a large additional burden to add influenza immunization status and to report rates. Reporting will be accomplished through the Department’s Healthcare Emergency Response Data System (HERDS), which many healthcare facilities use to report influenza morbidity during the influenza season.

Regarding immunization of personnel by outside providers and required documentation, the data elements of date, provider name, and address are typically provided on immunization cards given as proof of vaccination and are needed to ensure that vaccination was obtained.

The rule imperils worker safety (NYSNA, CSEA, LeadingAge)

Commenters speculated that mask wear might create a communication barrier, especially for patients with hearing impairment or mental health issues, and it was suggested that this is a violation of the New York State Public Employer Workplace Violence Prevention regulation. Commenters suggested that masks might be a physiologic burden for persons with lung disease, claustrophobia, etc. Finally, a commenter suggested that the regulation would require facilities to conduct additional OSHA hazard analyses.

Response

The masks called for under this regulation are light-weight surgical or procedure masks that do not form a seal and are worn in hospitals every day for hours at a time, such as in operating rooms. The regulation does not call for N95 respirators, which could potentially form a physiologic barrier. Under certain conditions, personnel covered by this regulation already have to wear masks as a matter of course in healthcare settings.

When communication barriers, violence, or other negative reactions are

a concern, the Department expects facilities and agencies to use the same procedures as are used now when masks are required for other reasons. The regulation's requirement to wear masks does not violate the New York State Public Employer Violence Prevention Regulations. Currently, HCP may be required to wear a mask for a variety of reasons not related to these regulations.

OSHA regulations require that all employers evaluate their workplaces for hazards and take appropriate measures. This regulation does not require any additional hazard analysis beyond what is already required under OSHA regulations, nor does it violate OSHA laws or regulations.

The rule adversely impacts workers' rights

(NYSNA, LeadingAge, NYCOSH, Private Individual)

Commenters suggested that the regulation is coercive and punitive rather than preventative, that it could stigmatize workers, and that it is a human rights violation. There was concern that the regulation indirectly tries to achieve mandatory vaccination. Commenters suggested that it is a privacy issue for workers because the mask might indicate that a person was not vaccinated, and that it therefore might be a Health Insurance Portability and Accountability Act (HIPAA) violation.

Response

This regulation is designed to give HCP a choice in how they protect patients from influenza – either immunization or mask wear, and while neither is perfect, both are expected to provide some level of protection for patients. A state regulation requiring that unvaccinated personnel wear masks does not violate HIPAA.

Miscellaneous concerns

(Private Individual, NYSNA, CareGivers, Genesee Region HCA, LeadingAge, ESAAL, HCA)

Home Care agencies expressed concern that the regulation cannot be enforced in the community and home care setting. One commenter stated that the regulation does not accommodate those who cannot get the vaccine. Another commenter stated that the Department's surveillance does not show that HCP transmit influenza in hospitals. There was concern that the regulation would not prevent an epidemic because no similar measures are proposed in non-healthcare settings. One commenter suggested that mask wear might create a false sense of security and make it appear acceptable to work if ill. A commenter suggested that the regulation is overly broad in that it requires mask wear by anyone in patient areas regardless of role. A commenter suggested that masks detract from a home-like environment in long-term care settings. A commenter expressed concern that the mandate might result in staffing shortages from terminations or voluntary resignations or might discourage people from working or volunteering. Finally, a commenter suggested exceptions for cases in which persons might be frightened by masks.

Response

Agencies will need to develop policies and a means of assessing compliance, just as they currently do for other regulations that affect home care. Mask wear is the alternative method of protecting patients from influenza for HCP who are unvaccinated, regardless of the reason. Each year the Department receives numerous reports of influenza outbreaks in healthcare facilities, and it is known that HCP can transmit influenza to patients. The regulation is focused on preventing healthcare-associated transmission. Healthcare facilities and agencies should continue to stress the importance of not working when ill and enforce relevant policies. The regulation applies to any personnel who are around patients because proximity determines likelihood of transmission more than the person's role. There are circumstances outside of this regulation where mask use is required in long term care settings, and any detraction from the home-like environment can be minimized by ensuring that all eligible, willing personnel are vaccinated. The Department does not expect staffing shortages as a result of this regulation; on the contrary, fewer ill HCP should improve the staffing situation during influenza season. If any persons are frightened by masks, facilities and agencies should have plans to address those fears as they would when masks are required for other reasons.

Supportive and other comments

NYCDOHMH supports the intent of the proposal and expresses concern about the definition of the influenza season, stating that local health departments (LHDs) should be able to make the determination themselves.

NYSACHO states that the past influenza season highlights the need to promote vaccinations and put other measures in place, notes that lower than optimal HCP vaccination rates are concerning, and states that the regulation is "an important step in ensuring that patient care comes first." Further, masks can potentially decrease transmission and there is a "need for strong policies to minimize the risk that unvaccinated healthcare workers pose to patients and co-workers". Finally, they state that the "proposed regulation balances workers' rights and patient safety while providing for appropriate flexibility".

ACSH suggest a policy mandating influenza immunization for all HCP.

Response

The definition of the influenza season for the purpose of this regulation

is based on State surveillance data and determined by the Commissioner. The Commissioner may consider data and input from LHDs and other knowledgeable entities. The Department agrees that this regulation will improve patient safety, while providing an alternative way to protect patients for HCP who cannot be vaccinated or who refuse to be vaccinated.

Conclusion

After careful review and consideration of all comments the Department determined that the regulation will be published for final adoption with no changes.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York Higher Education Loan Program (NYHELPS)

I.D. No. ESC-31-13-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: This is a consensus rule making to amend sections 2213.4(d), 2213.20 and 2213.28; addition of sections 2213.20(b)(6) and 2213.28(f); and repeal of section 2213.20(g)(2)(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 691(10) and 655(4)

Subject: New York Higher Education Loan Program (NYHELPS).

Purpose: To establish additional borrower benefits.

Text of proposed rule: Subdivision (d) of section 2213.4 is amended as follows:

(d) Each of the Corporation and any public benefit corporation described in section [2200-a.1(r)] 2213.1(ad) may participate in the Program as a lender and, in such case, all references in this subchapter to the lender shall be deemed applicable to the Corporation or such public benefit corporation, as applicable, in such capacity, except to the extent that the Corporation or such public benefit corporation would be required thereby to provide the information to or enter into a contractual arrangement with itself.

Paragraph (2) of subdivision (b) of section 2213.20 is amended as follows:

(2) Economic hardship forbearance. Subject to paragraph (5) of this subdivision, a borrower who is not in default on the repayment of a program loan(s) and who is unable to make payments because of a temporary change in [the borrower's, and any cosigner's,] financial circumstances may apply to the corporation for a forbearance due to economic hardship in accordance with criteria set forth in the program's default avoidance and claim manual. Economic hardship forbearance shall not extend the original repayment terms of the previously disbursed program loans.

Subdivision (b) of section 2213.20 is amended to add a new paragraph (6) as follows:

(6) *Disaster relief. In a federally declared major disaster, as defined by 42 U.S.C. section 5122(2), the corporation may grant certain relief for borrowers and cosigners within a federally declared disaster area, including the cessation of due diligence and collection activities for up to three months and suspension of required payments under certain repayment plans. Prior to granting any relief under this paragraph, the corporation shall perform an impact assessment and with respect to program loans that are otherwise eligible for purchase by a public benefit corporation shall be subject to approval by such public benefit corporation.*

Subparagraph (i) of paragraph (2) of subdivision (g) of section 2213.20 is repealed, and subparagraphs (ii) and (iii) are renumbered subparagraphs (i) and (ii).

Section 2213.28 is amended as follows:

For purposes of this Part, the following manuals referred to throughout are hereby incorporated by reference and are available at www.hesc.ny.gov/content.nsf/SFC/NYHELPS_Regulations:

Subdivision (e) of section 2213.28 is amended as follows:

(e) from and including March 6, 2013, until superseded, the program's default avoidance and claim manual version number 5, dated March 6, 2013, and the program's underwriting manual version number 5, dated March 6, 2013[.]; and

Section 2213.28 is amended to add a new subdivision (f) as follows:

(f) from and including October 2, 2013, until superseded, the program's default avoidance and claim manual version number 6, dated October 2, 2013.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1315, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to: (i) amend §§ 2213.4(d), 2213.20(b)(2), 2213.28, and 2213.28(e) of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR); (ii) add §§ 2213.20(b)(6) and 2213.28(f) of Title 8 of the NYCRR; (iii) repeal § 2213.20(g)(2)(i) of Title 8 of the NYCRR; and (iv) renumber §§ 2213.20(g)(2)(ii) and 2213.20(g)(2)(iii) of Title 8 of the NYCRR.

It is apparent from the nature and purpose of this rule that no person is likely to object to the adoption of the rule as written because it is non-controversial. The New York Higher Education Loan Program (NYHELPS) was enacted to provide students and their families with low cost loans to fill the gap between the cost of college and available financial aid. This rule: (i) establishes additional borrower benefits regarding economic hardship forbearance and modified payment plans, disaster relief, cosigner release, and the assessment of collection costs; (ii) corrects an erroneous citation and other technical errors; and (iii) provides the Corporation's web address for public access of the NYHELPS regulations, including the manuals which are incorporated by reference.

Consistent with the definition of "consensus rule", as set forth in section 102(11) of the State Administrative Procedure Act, HESC has determined that because this proposal benefits students and their families it is non-controversial and, therefore, no person is likely to object to its adoption.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to: (i) amend §§ 2213.4(d), 2213.20(b)(2), 2213.28, and 2213.28(e) of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR); (ii) add §§ 2213.20(b)(6) and 2213.28(f) of Title 8 of the NYCRR; (iii) repeal § 2213.20(g)(2)(i) of Title 8 of the NYCRR; and (iv) renumber §§ 2213.20(g)(2)(ii) and 2213.20(g)(2)(iii) of Title 8 of the NYCRR.

It is apparent from the nature and purpose of this rule that it has no impact on jobs and employment opportunities. The New York Higher Education Loan Program (NYHELPS) was enacted to provide students and their families with low cost loans to fill the gap between the cost of college and available financial aid. This rule establishes additional borrower benefits, corrects technical errors, and provides the Corporation's web address for public access of the NYHELPS regulations, including the manuals which are incorporated by reference.

The Corporation has determined that this rule will have no substantial adverse impact on any private or public sector jobs or employment opportunities and therefore a full Job Impact Statement is not necessary.

Department of Motor Vehicles

NOTICE OF ADOPTION

Restriction on Driver's License

I.D. No. MTV-22-13-00007-A

Filing No. 764

Filing Date: 2013-07-16

Effective Date: 2013-07-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 3.2 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 501(2)(c)

Subject: Restriction on driver's license.

Purpose: To establish the medical certification exemption restriction on driver's licenses.

Text or summary was published in the May 29, 2013 issue of the Register, I.D. No. MTV-22-13-00007-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

EMERGENCY/PROPOSED

RULE MAKING

NO HEARING(S) SCHEDULED

Suspension and Waiver of Late Payment Charges and Tariffs by Niagara Mohawk Power Corporation D/B/A National Grid

I.D. No. PSC-31-13-00010-EP

Filing Date: 2013-07-16

Effective Date: 2013-07-16

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Proposed Action: The Public Service Commission adopted an order authorizing Niagara Mohawk Power Corporation d/b/a National Grid to suspend late payment charges, and to temporarily waive certain late payment charge tariff provisions, for customers residing or located in Mohawk Valley communities severely affected by flooding in late June and early July 2013.

Statutory authority: Public Service Law, sections 30, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 46, 48, 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9), (10) and (12)

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) § 202(6). Authorizing the waiver of tariffs and suspension of late billing charges by Niagara Mohawk Power Corporation d/b/a National Grid is necessary to prevent harm to customers who have suffered hardship resulting from the Mohawk Valley region flooding and the attending loss of critical utility services. Without this action, the customers struggling to overcome the effects of flooding might find their efforts thwarted or impeded, to their detriment and the detriment of their communities that depend upon these customers for their economic, social and cultural viability.

Subject: Suspension and waiver of late payment charges and tariffs by Niagara Mohawk Power Corporation d/b/a National Grid.

Purpose: To authorize suspension and waiver of late payment charges and tariffs by Niagara Mohawk Power Corporation d/b/a National Grid.

Substance of emergency/proposed rule: The Public Service Commission adopted an order authorizing Niagara Mohawk Power Corporation d/b/a National Grid to suspend late payment charges, and to temporarily waive certain late payment charge tariff provisions, for customers residing or located in Mohawk Valley communities severely affected by flooding in late June and early July 2013. The Commission may adopt, reject or modify, in whole or in part, the relief adopted in the Order and may resolve related matters.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 13, 2013.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-M-0307EP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Issuance of Long-Term Debt Securities

I.D. No. PSC-31-13-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering the petition of St. Lawrence Gas Company, Inc. for the authorization to issue up to \$15 million in long-term debt securities.

Statutory authority: Public Service Law, section 69

Subject: Issuance of long-term debt securities.

Purpose: To approve the petition of St. Lawrence Gas Company, Inc. to issue up to \$15 million in long-term debt securities.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by St. Lawrence Gas Company, Inc. to issue up to \$15 million in long-term debt securities.

The proposed action would allow St. Lawrence Gas Company, Inc. to replace expiring long-term debt and replace short term debt.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-G-0299SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-31-13-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Public Service Commission is considering to approve, modify, or reject a Petition from the Town of Grafton to waive 16 NYCRR sections 894.1 through 894.4 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of Grafton, to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify, or reject the Petition of the Town of Grafton, Rensselaer County to waive the requirements of 16 NYCRR, sections 894.1 through 894.4 to expedite the franchising process.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza,

Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-V-0301SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Waiver of PSC Regulations, 16 NYCRR, Sections 88.4(a)(4), 86.3(a)(i) and (iii), 86.3(a)(2), 86.3(b)(2) and 86.4(b)

I.D. No. PSC-31-13-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Waiver of certain provisions of 16 NYCRR regarding requirements for applications under PSC Article VII for Certificates of Environmental Compatibility and Public Need, requested in a motion by applicant, West Point Partners LLC.

Statutory authority: Public Service Law, sections 4 and 122

Subject: Waiver of PSC regulations, 16 NYCRR, sections 88.4(a)(4), 86.3(a)(i) and (iii), 86.3(a)(2), 86.3(b)(2) and 86.4(b).

Purpose: To consider a waiver of certain regulations relating to the content of an application for transmission line siting.

Substance of proposed rule: The Public Service Commission is considering a motion by West Point Partners LLC for a waiver or partial waiver of certain requirements for the content of an application for authority to construct and operate an electric transmission line pursuant to a Certificate of Environmental Compatibility and Public Need under Public Service Law Article VII. West Point Partners proposes to construct and operate a high-voltage Direct Current transmission line, approximately 80 miles long, buried in the bed of the Hudson River, as well as underground connections to two converter stations at either end, one to connect to the Leeds Substation, in the Town of Athens, Greene County and the other to the Buchanan North Substation in the Village of Buchanan, Westchester County. West Point Partners specifically seeks waivers of 16 NYCRR Sections 88.4(a)(4), 86.3(a)(i) and (iii), 86.3(a)(2), 86.3(b)(2) and 86.4(b), relating to a System Reliability Impact Study, maps, and aerial photographs.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-T-0292SP1)

Department of State

NOTICE OF ADOPTION

Distinguishability of Corporation and Other Business Entity Names

I.D. No. DOS-16-13-00006-A

Filing No. 765

Filing Date: 2013-07-16

Effective Date: 2013-07-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Repeal of section 156.2 and addition of new section 156.2 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91

Subject: Distinguishability of corporation and other business entity names.

Purpose: To implement State law entity name distinguishability requirements.

Text of final rule: Section 156.2 is repealed and a new section 156.2 is added to read as follows.

156.2 Standards

This section furnishes general guidelines used to determine whether a proposed name is acceptable as the name of an entity in the records of the Secretary of State.

(a) Definitions

(1) The term "entity" means a domestic corporation, limited liability company, limited partnership or registered limited liability partnership or foreign corporation, limited liability company, limited partnership or New York registered foreign limited liability partnership.

(2) The term "name" means the real name of a domestic corporation, limited liability company, limited partnership or registered limited liability partnership or the real or fictitious name of a foreign corporation, limited liability company, limited partnership or New York registered foreign limited liability partnership.

(3) The term "existing entity" means a domestic corporation, limited liability company or limited partnership that has not been dissolved, annulled, or had its authority to do business cancelled or revoked, or a foreign corporation, limited liability company or limited partnership that has not surrendered its authority, terminated its existence or had its authority to do business or conduct activities annulled.

(4) "Entity indicator" means the words "corporation", "incorporated", "limited", "limited liability company", "professional service limited liability company", "professional service corporation", "design professional corporation", "limited partnership", "limited liability partnership", "registered limited liability partnership" or any permitted abbreviation thereof used in the name of an entity. An entity indicator must be separate from other words or parts of words in the entity name to be considered an entity indicator.

(5) "Key Word" means a word other than an article of speech, preposition, conjunction, or an entity indicator.

(b) General Matters

(1) **Typography.** A name may consist of only letters of the English alphabet, Arabic and Roman numerals, and symbols capable of being reproduced on a standard English language keyboard.

(2) Special Characters and Punctuation.

(i) The following special characters will be allowed in the name, however they will not, by themselves, make a name distinguishable: ampersand (&), asterisk (*), backslash (\), left brace ({}), right brace (}), "greater than" sign (>), and "less than" sign (<).

(ii) The following special characters will be allowed in the name and will, by themselves, make a name distinguishable: "at" sign (@), dollar sign (\$), "equal to" sign (=), percentage sign (%), plus sign (+), number sign (#), and cent sign (¢).

(iii) The following punctuation marks will be allowed in the name, however they will not, by themselves, make a name distinguishable: apostrophe ('), left bracket ([), right bracket (]), colon (:), comma (,), dash or hyphen (-), exclamation point (!), left parenthesis ((), right parenthesis ()), period (.), question mark (?), single quote mark ('), double quote mark (" "), semicolon (;) and slash (/).

(3) **Terms indicating form.** A name shall contain no more than one entity indicator. An entity indicator of one form shall not be used as part of the name of an entity of a different form. An entity indicator shall not be used as part of an assumed name.

(4) Every initial certificate and every certificate amending the name of an entity shall include an English translation of the entity's name if the name contains a word or words in a language other than English.

(c) Distinguishable Names

In order to be accepted for filing, a proposed name of a domestic corporation, limited liability company or limited partnership or foreign corporation, limited liability company or limited partnership must be distinguishable from the name of any existing entity and from any reserved name on the records of the Secretary of State. A name is distinguishable if:

(1) Each name contains one or more different letters or numerals, or has a different sequence of letters or numerals, except that adding or deleting the letter "s" to make a word plural, singular, or possessive shall not make a name distinguishable; or

(2) One of the key words is different; or

(3) The key words are the same, but they are in a different order; or

(4) The key word or words are the same, but the spelling of at least one key word is different.

(d) Indistinguishable Names

A proposed name is not distinguishable from the name of any other existing entity or from a reserved name if the only difference between them is one or more of the following:

(1) Differences in punctuation or hyphenation, use of plural or possessive form of the same word, differences in tense, including present versus past tense, or the addition or omission of spaces between words or letters.

(2) As determined by the Department of State, the addition or omission of any article of speech, preposition or conjunction or use of a contraction of words in the name of the existing entity or reserved name.

(3) As determined by the Department of State, use of the commonly used abbreviation of a word in one name and the spelling out of a word in another name.

(4) The use of special characters instead of spelling out the names of special characters or what they stand for, or vice versa, as determined by the Department of State. The use of the special character shall be considered the equivalent of the spelling of the name of the special character.

(5) Addition or exclusion of special characters other than those listed in section 156.2(b)(2)(ii).

(6) The expression of a number or numbers using letters instead of Arabic Numerals.

(7) The inclusion or exclusion of an entity indicator (e.g., "Corporation," "Limited Liability Company," etc.) or any abbreviation thereof.

(8) Addition or omission of the word or abbreviations of "Company" or "Companies."

(9) Deviations from or derivatives of the same key word, as determined by the Department.

(10) Differences between upper and lower case letters, typeface or font.

(e) The filing of a name does not grant rights or interests in that name. The Department of State's role is ministerial. The Secretary of State does not have the power to determine or settle competing claims to a name under other statutes or under common law.

(f) The methodology used by the Department of State to ascertain whether a proposed name is acceptable will not insure that in all instances a name which is unacceptable is rejected. It is the responsibility of the entity to determine to its satisfaction that the proposed name is in compliance with all applicable laws and rules. When a name which has been accepted for filing is later found to be unacceptable, the Department of State will notify the entity that it is required to amend the filed document in order to comply with all applicable statutory and regulatory provisions. Upon the failure of the entity to amend the filed document within thirty days of such notification, its authority to carry on, conduct or transact business or conduct activities in this state shall be suspended by the Department of State. If, at any time following the suspension of an entity's authority to carry on, conduct or transact business or conduct activities in this state, pursuant to this paragraph, such entity shall amend its filed document so as to comply with all applicable statutory and regulatory provisions, or if the Department of State shall determine that the filed name is acceptable, the suspension shall be annulled and the entity's authority to carry on, conduct or transact business or conduct activities in this state shall be restored and continue as if no suspension had occurred.

(g) The conditions set forth in these regulations are not exclusive, and the Secretary of State may exercise discretion in determining whether a proposed name is distinguishable from the real or fictitious name of an existing domestic or foreign authorized organization or a reserved name.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 156.2(b)(2)(i) and (ii).

Text of rule and any required statements and analyses may be obtained from: Gary M. Trechel, Esq., Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, (518) 473-2278, email: gary.trechel@dos.ny.gov

Revised Regulatory Impact Statement

A Revised Regulatory Impact Statement is not required because changes made to the last published rule do not necessitate revision to the previously published rule. It is evident from the subject matter of this rule that it will not impose any additional costs or requirements.

Revised Regulatory Flexibility Analysis

A Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required because changes made to the last published rule do not necessitate revision to the previously published rule. It is evident from the subject matter of this rule that it will have no adverse economic impact or any reporting, record keeping or other compliance requirements on small businesses or local governments.

Revised Rural Area Flexibility Analysis

A Revised Rural Area Flexibility Analysis is not required because changes made to the last published rule do not necessitate revision to the previously published rule. It is evident from the subject matter of this rule that it will have no adverse economic impact on rural areas, nor any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Revised Job Impact Statement

A Revised Job Impact Statement is not required because changes made to the last published rule do not necessitate revision to the previously published rule. It is evident from the subject matter of this rule that it will have no impact on jobs and employment opportunities.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.