

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 Agriculture and Markets

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Captive Cervids

I.D. No. AAM-44-13-00007-EP

Filing No. 993

Filing Date: 2013-10-15

Effective Date: 2013-10-15

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

Proposed Action: Amendment of sections 68.1, 68.2, 68.3, 68.5, 68.7 and 68.8 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 72 and 74
Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The rule provides that until November 15, 2013, cervids (deer, elk and moose) susceptible to CWD may be moved into New York State, provided the Department has received a completed application for movement prior to October 15, 2013; the CWD susceptible cervids are moved from a herd which has achieved CWD certified herd status; the state of origin has adopted mandatory reporting and quarantine requirements equivalent to those in Part 68 of 1 NYCRR; and the CWD susceptible cervids are not from a CWD infected zone. Effective November 16, 2013, the rule prohibits the movement of cervids susceptible to CWD into New York State until August 1, 2018, except movements to a zoo accredited by the Association of Zoos and

Aquariums. The rule also provides that prior to August 1, 2018, the Commissioner shall hold hearings to reevaluate the risk and impacts of allowing limited movement of CWD-susceptible cervids into New York State and if warranted, amend the rule to address changes in circumstances. Finally, the rule requires confinement and CWD testing for captive cervids within New York State. This is due to the further spread of CWD.

CWD, Chronic Wasting Disease, is a progressive, fatal, degenerative neurological disease of captive and free-ranging deer, elk, and moose (cervids) that was first recognized in 1967 as a clinical wasting syndrome of unknown cause in captive mule deer in Colorado. CWD belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). The name derives from the pin-point size holes in brain tissue of infected animals which gives the tissue a sponge-like appearance. TSEs include a number of different diseases affecting animals and humans including bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep and goats and Creutzfeldt-Jacob disease (CJD) in humans. Although CWD shares certain features with other TSEs, it is a distinct disease affecting only deer, elk and moose. There is no known treatment or vaccine for CWD.

The origin of CWD is unknown. The agent that causes CWD and other TSEs has not been completely characterized. However, the theory supported by most scientists is that TSE diseases are caused by proteins called prions. The exact mechanism of transmission is unclear. However, evidence suggests that as an infectious and communicable disease, CWD is transmitted directly from one animal to another through saliva, feces, and urine containing abnormal prions shed in those body fluids and excretions. The species known to be susceptible to CWD are Rocky Mountain elk (*Cervus canadensis*), red deer (*Cervus elaphus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), sika deer (*Cervus nippon*), and moose (*Alces alces*).

CWD is a slow and progressive disease. Because the disease has a long incubation period (1 1/2 to 5 years), deer, elk and moose infected with CWD may not manifest any symptoms for a number of years after they become infected. As the disease progresses, deer, elk and moose with CWD show changes in behavior and appearance. These clinical signs may include progressive weight loss, stumbling, tremors, lack of coordination, excessive salivation and drooling, loss of appetite, excessive thirst and urination, listlessness, teeth grinding, abnormal head posture and drooping ears.

The United States Secretary of Agriculture declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program. This prompted the Department in 2004 to adopt regulations which allow for importation of captive cervids from states with confirmed cases of CWD under a health standard and permit system.

Nonetheless, 22 states, including New York, as well as two provinces in Canada have either CWD detections in free ranging deer or have cases of CWD diagnosed in captive deer. Most recently, this past fall, CWD was diagnosed in captive and wild deer in Pennsylvania. Given the proximity of this detection to New York and the apparent further spread of this disease throughout the country, the Department and the Department of Environmental Conservation (DEC) entered into a memorandum of understanding which restricts movement of captive cervids from these other states and the two Canadian provinces into New York State. However, since entities in these states and provinces can still access New York markets by moving deer to states not subject to the ban, it was decided that the best approach to protect New York's deer population was to ban importation until August 1, 2018 of any captive cervids into the State except movements to a zoo accredited by the Association of Zoos and Aquariums.

The regulations are necessary to protect the general welfare, since the effective control of CWD will be accomplished with adoption of this regulation. By banning importation of captive cervids into New York State

until August 1, 2018 and requiring confinement and CWD testing of captive deer, the rule will help safeguard animal health as well as protect New York's 14 million dollar captive deer industry and the 780.5-million dollar wild deer hunting industry.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of these amendments is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Captive cervids.

Purpose: To prevent the further spread of chronic wasting disease in New York State.

Public hearing(s) will be held at: 12:00 p.m., Dec. 19, 2013 at Department of Agriculture and Markets, 10B Airline Dr., Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of emergency/proposed rule: Subdivision (f) of section 68.1 of 1 NYCRR is repealed and a new subdivision (f) of section 68.1 of 1 NYCRR is added to read as follows:

(f) *CWD infected zone means:*

(1) any state which has had a diagnosed case of CWD in captive or wild cervids within the past 60 months;

(2) any part of a state which is within 50 miles of a site in another state where CWD has been diagnosed in captive or wild cervids within the past 60 months; or

(3) any area designated by the Commissioner as having a high risk of CWD contamination.

Subdivision (r) of section 68.1 of 1 NYCRR is amended to read as follows:

(r) Official identification means a unique form of individual animal identification approved by [the department] *USDA/APHIS and the Department*. Cervids in a herd under the Herd Certification Plan must have at least one eartag as one [to] of two means of animal identification.

Subdivision (c) of section 68.2 of 1 NYCRR is amended to read as follows:

(c) Movement of captive cervids. No person shall import, move or hold captive cervids into or within New York State except in compliance with the requirements of this Part. A valid certificate of veterinary inspection shall accompany all cervids imported into New York State, with the exception of those moving directly to slaughter. In addition, no person shall import or move captive cervids into the State or within the State for any purpose, including slaughter [and transit through New York State] unless a movement permit authorizing such movement has been obtained from the [d]Department prior to such movement. An application for a movement permit may be obtained by calling the [d]Department during normal business hours. The [d]Department will consult with the New York State Department of Environmental Conservation prior to the issuance of a movement permit. Except for cervids moving directly to slaughter, movement permits shall be issued only for captive cervids that meet the New York State animal health requirements for captive cervids of this Part. All cervids to be moved, other than cervids moving directly to slaughter, must have approved, unique and tamper evident identification prior to movement. The removal or alteration of any official form of animal identification without the prior permission of the [d]Department is prohibited.

Subdivisions (c), (d), (e), (f) and (g) of section 68.3 of 1 NYCRR are relettered subdivisions (d), (e), (f), (g) and (h); subdivision (b) is repealed and a new subdivision (b) and a new subdivision (c) are added to read as follows:

(b) *Until November 15, 2013, CWD susceptible cervids from states other than New York shall be approved for importation into New York provided:*

(1) a completed application for movement has been received by the Department prior to October 15, 2013; and

(2) the CWD susceptible cervids are moved from a herd which has achieved CWD certified herd status; and

(3) the state of origin has adopted mandatory reporting and quarantine requirements equivalent to those set forth in this Part; and

(4) the CWD susceptible cervids are not from a CWD infected zone.

(c) *From November 16, 2013 until August 1, 2018, all movements of CWD susceptible cervids into New York State are prohibited except movements to a zoo accredited by the Association of Zoos and Aquariums, 8403 Colesville Rd., Suite 710, Silver Spring, MD 20910-3314. No such movements shall be made unless approved prior to the movement by the com-*

missioner or his/her designee in consultation with the New York Department of Environmental Conservation. Prior to August 1, 2018, the commissioner will hold public hearings to reevaluate the risks and impacts of allowing limited movement of CWD susceptible cervids into New York from other states and propose amendments to this Part if needed to prevent the introduction of Chronic Wasting Disease into New York.

Subdivision (e) of section 68.3 of 1 NYCRR, as relettered subdivision (f), is amended to read as follows:

[(e)] (f) Premises inspection required. All captive cervid facilities and perimeter fencing shall be inspected and approved by a State or Federal regulatory representative. The initial inspection shall be conducted prior to the addition of any cervids. Cervids may not be added to the premises prior to inspection and approval. *For herds which are being enrolled in the CWD Herd Certification Program, physical restraint equipment adequate for the number of cervids to be held in the enclosure shall be in place before the herd is enrolled in the Program.* Facilities and fencing shall be subject to inspection by State and Federal regulatory officials periodically thereafter in order to maintain program participant status.

Subdivision (a) of section 68.5 of 1 NYCRR is amended to read as follows:

(a) CWD monitored herd. All special purpose herds consisting of one or more CWD susceptible cervids shall participate in the CWD Monitored Herd Program if they are not participating in the CWD Certified Herd program. No live cervid sales or movements may be made from CWD monitored herds *except as provided in this section*. Live cervids may not be removed from the premises of a CWD monitored herd except for animals being shipped with a movement permit [for immediate slaughter at an approved facility].

Subparagraphs (i) and (iii) of paragraph (1) of subdivision (b) of section 68.5 of 1 NYCRR are amended to read as follows:

(i) submit for test appropriate CWD samples from all natural deaths of CWD susceptible cervids over [16] 12 months of age;

(iii) submit for test appropriate CWD samples from slaughter and/or harvested cervids so that the total number of cervids sampled on an annual basis (January 1st to December 31st) represents 10 percent or 30, whichever is less, of the total number of susceptible cervids over [16] 12 months within the herd *as of March 31st*. In no case shall the combined number of cervids sampled on an annual basis represent less than 10 percent (rounded [up] down to the next whole number) or 30, whichever is less, of the estimated susceptible test eligible herd population. Notwithstanding this Part, all natural deaths must be submitted for CWD diagnosis.

Paragraph (2) of subdivision (c) of section 68.5 of 1 NYCRR is repealed and a new paragraph (2) is added to read as follows:

(2) *Additions to CWD monitored herds shall be permitted only if they originate from herds that have achieved CWD certified herd status or as provided in section 68.5(f) of this Part.*

Paragraph 3 of subdivision (c) of section 68.5 of 1 NYCRR is repealed.

A new subdivision (f) of section 68.5 of 1 NYCRR is added to read as follows:

(f) *Permitted removal of all susceptible species from a CWD Monitored herd.*

Notwithstanding the provisions of this section, live cervid sales or movements may be made from CWD monitored herds if the owner has signed a herd dispersal agreement containing the following conditions:

(1) *The owner agrees to remove all susceptible species from the property;*

(2) *A number of cervids as determined by the Commissioner shall be tested prior to the removal of live animals;*

(3) *A permit is obtained from the Department prior to any movement;*

(4) *All animals moved are individually identified with an approved identification tag;*

(5) *The receiving premises must be in a monitored herd program and the owner must agree to provide samples from the cervids within a timeframe as prescribed by the Commissioner; and*

(6) *The Commissioner may add any other conditions to the herd dispersal agreement as required to control CWD.*

Section 68.7 of 1 NYCRR is repealed and section 68.8 of 1 NYCRR is renumbered section 68.7.

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 January 12, 2014.

Text of rule and any required statements and analyses may be obtained from: Dr. David Smith, DVM, Director, Division of Animal Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502, email: david.smith@agriculture.ny.gov

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

Public comment will be received until: Five days after the last scheduled public hearing.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. Statutory authority:

Section 18(6) of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department.

Section 72 of the Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 72 of the Law also provides that whenever any infectious or communicable disease affecting domestic animals shall exist or have recently existed outside this State, the Commissioner shall take measures to prevent such disease from being brought into the State.

Section 74 of the Law authorizes the Commissioner to adopt rules and regulations relating to the importation of domestic or feral animals into the State.

2. Legislative objectives:

The statutory provisions pursuant to which these regulations are proposed are aimed at preventing infectious or communicable diseases affecting domestic animals from being brought into the State and controlling, suppressing and eradicating such diseases and preventing the spread of infection and contagion. The Department's proposed amendment of 1 NYCRR Part 68 will further this goal by helping prevent the spread of chronic wasting disease (CWD) in the State.

3. Needs and benefits:

The rule provides that until November 15, 2013, cervids (deer, elk and moose) susceptible to CWD may be moved into New York State, provided the Department has received a completed application for movement prior to October 15, 2013; the CWD susceptible cervids are moved from a herd which has achieved CWD certified herd status; the state of origin has adopted mandatory reporting and quarantine requirements equivalent to those in Part 68 of 1 NYCRR; and the CWD susceptible cervids are not from a CWD infected zone. Effective November 16, 2013, the rule prohibits the movement of cervids susceptible to CWD into New York State until August 1, 2018, except movements to a zoo accredited by the Association of Zoos and Aquariums. The rule provides that prior to August 1, 2018, the Commissioner shall hold hearings to reevaluate the risk and impacts of allowing limited movement of CWD-susceptible cervids into New York State and if warranted, amend the rule to address changes in circumstances.

The rule also addresses the movement of captive cervids within New York State. This is necessary since in the last two years, four states, including Pennsylvania, have had CWD detections in captive cervids. It is believed that the positive finds may have come from contact with infected wild deer or infected deer which were illegally brought into the State from a state with CWD. In order to move captive cervids within New York State, the deer must have CWD monitored herd status. The rule implements requirements in order for a deer herd to have this status. Adequate physical restraint equipment must be used in order to keep the deer securely within an enclosure. Deer 12 months of age or older that die of natural causes must be tested for CWD. Finally, among deer 12 months of age or older, ten percent of the herd or 30 deer, whichever is less, must be tested annually for CWD.

CWD, Chronic Wasting Disease, is a progressive, fatal, degenerative neurological disease of captive and free-ranging deer, elk, and moose (cervids) that was first recognized in 1967 as a clinical wasting syndrome of unknown cause in captive mule deer in Colorado. CWD belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). The name derives from the pin-point size holes in brain tissue of infected animals which gives the tissue a sponge-like appearance. TSEs include a number of different diseases affecting animals and humans including bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep and goats and Creutzfeldt-Jacob disease (CJD) in humans. Although CWD shares certain features with other TSEs, it is a distinct disease affecting only deer, elk and moose. There is no known treatment or vaccine for CWD.

The origin of CWD is unknown. The agent that causes CWD and other TSEs has not been completely characterized. However, the theory supported by most scientists is that TSE diseases are caused by proteins called prions. The exact mechanism of transmission is unclear. However, evidence suggests that as an infectious and communicable disease, CWD is transmitted directly from one animal to another through saliva, feces, and urine containing abnormal prions shed in those body fluids and excretions. The species known to be susceptible to CWD are Rocky Mountain elk (*Cervus canadensis*), red deer (*Cervus elaphus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), sika deer (*Cervus nippon*), and moose (*Alces alces*).

CWD is a slow and progressive disease. Because the disease has a long incubation period (1 ½ to 5 years), deer, elk and moose infected with CWD may not manifest any symptoms of the disease for a number of years after they become infected. As the disease progresses, deer, elk and moose with CWD show changes in behavior and appearance. These clinical signs may include progressive weight loss, stumbling, tremors, lack of coordination, excessive salivation and drooling, loss of appetite, excessive thirst and urination, listlessness, teeth grinding, abnormal head posture and drooping ears.

The United States Secretary of Agriculture declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program. This prompted the Department in 2004 to adopt regulations which allow for importation of captive cervids from states with confirmed cases of CWD under a health standard and permit system.

Nonetheless, 22 states, including New York, as well as two provinces in Canada have either CWD detections in free ranging deer or have cases of CWD diagnosed in captive deer. Most recently, this past fall, CWD was diagnosed in captive and wild deer in Pennsylvania. Given the proximity of this detection to New York and the apparent further spread of this disease throughout the country, the Department and the Department of Environmental Conservation (DEC) entered into a memorandum of understanding which restricts movement of captive cervids from these other states and the two Canadian provinces into New York State.

However, since entities in these states and provinces can still access New York markets by moving deer to states not subject to the ban, it was decided that the best approach to protect New York's deer population was to ban importation until August 1, 2018 of any CWD susceptible cervids into the State, except movements to zoos accredited by the Association of Zoos and Aquariums. This will help safeguard animal health and protect New York's 14 million dollar captive deer industry and the 780.5-million dollar wild deer hunting industry. By requiring hearings prior to August 1, 2018, the Commissioner will reevaluate and consider possible changes in the risks and impacts of CWD in the next five years to determine whether limited movement of CWD susceptible cervids into New York State is warranted. This represents a potential benefit to deer farmers seeking to import deer from out of state. Finally, by requiring restraint in an enclosure and annual CWD tests for captive cervids in New York State, the rule will help control the possible transmission of this disease within the State.

4. Costs:

(a) Costs to regulated parties:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. Of these entities, approximately 10 to 15 purchase deer from out of state. Last year, 38 head of deer were purchased out of state by these entities at a cost of \$19,000 to \$190,000 (\$500 to \$5,000 per head). These entities would now have to purchase deer from entities within New York State which would actually result in additional sales for these other New York entities. The entities purchasing the deer may entail additional costs if due to the ban, market forces result in an increase in price for the deer purchased in New York.

For captive cervids, regulated parties will have to pay for adequate restraining devices, the costs for which vary. However, it is anticipated that most regulated parties already have such devices for purposes of restraining deer within an enclosure. Annual CWD tests cost \$26.50 per animal; however, the Department will pay for these tests.

(b) Costs to the agency, state and local governments:

There will be no cost to the State or local governments. The Department will pay the cost for the annual CWD tests for captive cervids. In 2012, 723 animals were tested in the State at a cost to the Department of \$19,168.

Source:

Costs are based upon data from the records of the Department's Division of Animal Industry as well as observations of the deer industry in New York State.

5. Local government mandates:

The proposed amendments would not impose any program, service, duty or other responsibility upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

It is anticipated that the rule will not result in any additional paperwork for regulated parties.

7. Duplication:

The rule does not duplicate any State or federal requirements.

8. Alternatives:

Five alternatives were considered.

The first alternative is to leave in place the current regulation which prohibits movement of CWD susceptible species into New York from states which have had a diagnosed case of CWD in captive or wild cervids in the past 60 months or any part of a state which is within 50 miles of a

site in another state where CWD has been diagnosed in the past 60 months. Given the current spread of CWD throughout the country, it was decided that this rule is inadequate, since deer farmers could circumvent this regulation by moving deer through states not subject to these requirements and in the process, access buyers in New York State.

The second alternative is to allow for importation of captive cervids from states with known cases of CWD if the states meet certain health standards and comply with a permitting system. However, this approach was determined to be inadequate given the apparent continuing spread of CWD in the country. Further, deer farmers could also circumvent New York's current regulation by accessing New York markets through movement of deer through states not subject to the current requirements.

The third alternative is to implement a total ban on the import of CWD susceptible species into New York State. This approach was rejected as too onerous for regulated parties, who would be unable to import deer into New York State at any time, regardless of whether the threat of CWD has lessened at a future date.

The fourth alternative is to implement a total ban on importation until October 1, 2018, except movements to a zoo accredited by the Association of Zoos and Aquariums, and to require restraint in an enclosure and annual CWD testing of captive cervids within New York State. Regarding the total ban on importation, the Commissioner is required to hold hearings prior to October 1, 2018 to reevaluate the risks and impacts of allowing limited movement of CWD susceptible cervids into New York State. The rule also requires restraint and annual testing of captive cervids in New York State. This approach was rejected since it was decided that the immediate ban did not provide sufficient notice to regulated parties of the ban.

The fifth alternative and the one ultimately chosen is to implement the ban on November 16, 2013 and continue it until August 1, 2018, except for movement to zoos accredited by the Association of Zoos and Aquariums. The rule also provides that prior to August 1, 2018, the Commissioner shall hold hearings to reevaluate the risk and impacts of allowing limited movement of CWD-susceptible cervids into New York State and if warranted, amend the rule to address changes in future circumstances. Finally, the rule requires confinement and CWD testing of captive cervids within New York State.

Due to the spread of CWD to other states and the threat that this disease poses to the State's captive deer population, it was decided that this fifth alternative as set forth in the rule was the best method of preventing the further introduction of this disease into New York State and permitting it to be detected and controlled if additional cases were to arise within the State. Further, the rule is mindful of regulated parties by requiring that the risks and impacts of CWD be revisited in hearings to be conducted prior to August 1, 2018. If circumstances at that time warrant limited movement of CWD susceptible cervids into New York State, the regulations would be amended accordingly. Regarding restraint and annual CWD testing of captive cervids, this provision of the rule will help control the possible spread of CWD in the State.

9. Federal standards:

The proposed regulations do not exceed any minimum standards of the federal government.

10. Compliance schedule:

The rule will be effective immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

There are approximately 433 small businesses raising a total of approximately 9,600 captive cervids in New York State.

The rule will have no impact on local governments.

2. Compliance requirements:

The rule provides that until November 15, 2013, cervids (deer, elk and moose) susceptible to CWD may be moved into New York State, provided the Department has received a completed application for movement prior to October 15, 2013; the CWD susceptible cervids are moved from a herd which has achieved CWD certified herd status; the state of origin has adopted mandatory reporting and quarantine requirements equivalent to those in Part 68 of 1 NYCRR; and the CWD susceptible cervids are not from a CWD infected zone. Effective November 16, 2013, the rule prohibits the movement of cervids susceptible to CWD into New York State until August 1, 2018, except movements to a zoo accredited by the Association of Zoos and Aquariums. The rule provides that prior to August 1, 2018, the Commissioner shall hold hearings to reevaluate the risk and impacts of allowing limited movement of CWD-susceptible cervids into New York State and if warranted, amend the rule to address changes in circumstances.

The rule also addresses the movement of captive cervids within New York State. In order to move captive cervids within the State, the deer must have CWD monitored herd status. The rule implements requirements in order for a deer herd to have this status. Adequate physical restraint equipment must be used in order to keep the deer securely confined within

an enclosure. Deer 12 months of age or older that die of natural causes must be tested for CWD. Finally, among deer 12 months of age or older, ten percent of the herd or 30 deer, whichever is less, must be tested annually for CWD.

The rule will have no impact on local governments.

3. Professional services:

It is not anticipated that regulated parties will have to secure any professional services in order to comply with this rule.

The rule will have no impact on local governments.

4. Compliance costs:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. Of these entities, approximately 10 to 15 purchase deer from out of state. Last year, 38 head of deer were purchased out of state by these entities at a cost of \$19,000 to \$190,000 (\$500 to \$5,000 per head). These entities would now have to purchase deer from entities within New York State which would actually result in additional sales for these other New York entities. The entities purchasing the deer may entail additional costs if due to the ban, market forces result in an increase in price for the deer purchased in New York.

For captive cervids, regulated parties will have to pay for adequate restraining devices, the costs for which vary. However, it is anticipated that most regulated parties already have such devices for purposes of restraining deer. Annual CWD tests cost \$26.50 per animal; however, the Department will pay for these tests.

The rule will have no impact on local governments.

5. Economic and technological feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed. The rule is economically feasible. Although the regulation may result in deer farmers paying higher prices for deer purchased within the State than they would if they were to purchase deer from out of state, the economic consequences of the infection or exposure to CWD of the approximately 9,600 captive cervids already in the State would be far greater. The rule is technologically feasible. The 10 to 15 deer farmers who have purchased deer from outside New York State would still be able to purchase animals within the State.

The rule will have no impact on local governments.

6. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses. While the ban prohibits approximately 10 to 15 entities from purchasing deer out of state, they would still be able to purchase animals from deer farmers within the State. Market forces may result in higher prices for these purchasers. However, the economic consequences of the infection or exposure to CWD of the approximately 9,600 captive cervids already in the State would be far greater absent the ban on importation set forth in the rule.

The rule will have no impact on local governments.

7. Small business and local government participation:

In developing this rule, the Department has consulted with representatives of the Northeast Deer and Elk Farmers as well as the Department of Environmental Conservation (DEC). Opinion of the rule appears to be divided. The 10 to 15 entities which purchase deer from out of state oppose the ban while a greater number of entities support the ban in order to protect their New York and out of state markets. DEC supports the rule. Outreach efforts will continue.

The rule will have no impact on local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The approximately 433 entities raising captive deer in New York State are located throughout the rural areas of New York, as defined by section 481(7) of the Executive Law.

2. Reporting, recordkeeping and other compliance requirements and professional services:

The rule provides that until November 15, 2013, cervids (deer, elk and moose) susceptible to CWD may be moved into New York State, provided the Department has received a completed application for movement prior to October 15, 2013; the CWD susceptible cervids are moved from a herd which has achieved CWD certified herd status; the state of origin has adopted mandatory reporting and quarantine requirements equivalent to those in Part 68 of 1 NYCRR; and the CWD susceptible cervids are not from a CWD infected zone. Effective November 16, 2013, the rule prohibits the movement of cervids susceptible to CWD into New York State until August 1, 2018, except movements to a zoo accredited by the Association of Zoos and Aquariums. The rule provides that prior to August 1, 2018, the Commissioner shall hold hearings to reevaluate the risk and impacts of allowing limited movement of CWD-susceptible cervids into New York State and if warranted, amend the rule to address changes in circumstances.

The rule also addresses the movement of captive cervids within New

York State. In order to move captive cervids within the State, the deer must have CWD monitored herd status. The rule implements requirements in order for a deer herd to have this status. Adequate physical restraint equipment must be used in order to keep the deer securely confined within an enclosure. Deer 12 months of age or older that die of natural causes must be tested for CWD. Finally, among deer 12 months of age or older, ten percent of the herd or 30 deer, whichever is less, must be tested annually for CWD.

It is not anticipated that regulated parties will have to secure any professional services in order to comply with the rule.

3. Costs:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. Of these entities, approximately 10 to 15 purchase deer from out of state. Last year, 38 head of deer were purchased out of state by these entities at a cost of \$19,000 to \$190,000 (\$500 to \$5,000 per head). These entities would now have to purchase deer from entities within New York State which would actually result in additional sales for these other New York entities. The entities purchasing the deer may entail additional costs if due to the ban, market forces result in an increase in price for the deer purchased in New York.

For captive cervids, regulated parties will have to pay for adequate restraining devices, the costs for which vary. However, it is anticipated that most regulated parties already have such devices for purposes of restraining deer. Annual CWD tests cost \$26.50 per animal; however, the Department will pay for these tests.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including those in rural areas. While the ban prohibits approximately 10 to 15 entities from purchasing deer out of state, they would still be able to purchase animals from deer farmers within the State. Market forces may result in higher prices for these purchasers. However, the economic consequences of the infection or exposure to CWD of the approximately 9,600 captive cervids already in the State would be far greater absent the ban on importation set forth in the rule.

5. Rural area participation:

In developing this rule, the Department has consulted with representatives of the Northeast Deer and Elk Farmers as well as the Department of Environmental Conservation (DEC). Opinion of the rule appears to be divided. The 10 to 15 entities which purchase deer from out of state oppose the ban while a greater number of entities support the ban in order to protect their New York and out of state markets. DEC supports the rule. Outreach efforts will continue.

Job Impact Statement

1. Nature of Impact:

It is not anticipated that there will be an impact on jobs and employment opportunities.

2. Categories and Numbers Affected:

The number of persons employed by the 433 entities engaged in raising captive deer in New York State is unknown.

3. Regions of Adverse Impact:

The 433 entities in New York State engaged in raising captive deer are located throughout the State.

4. Minimizing Adverse Impact:

By helping to protect the approximately 9,600 captive deer currently raised by approximately 433 New York entities from the further introduction of CWD, this rule will help to preserve the jobs of those employed in this agricultural industry.

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Avian Influenza

I.D. No. AAM-44-13-00003-P

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

Proposed Action: Amendment of Part 45 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 72

Subject: Avian Influenza.

Purpose: To amend Part 45.

Public hearing(s) will be held at: 10:00 a.m., Dec. 19, 2013 at 10B Airline Dr., Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request

must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Part 45 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

Section 45.2. Entry into the State.

No person shall enter the State of New York with any truck, coop, cage, crate or other conveyance for the purpose of removing, delivering or transporting live poultry unless the truck and the coop, cage, crate or other conveyance is in a sanitary condition. For the purpose of this Part, sanitary condition shall mean that the truck, coop, cage, crate or other conveyance has been cleaned and disinfected immediately prior to its arrival and that no other livestock or other poultry have used the truck or equipment since it was cleaned and disinfected. The operator of the truck shall maintain a record of the dates of cleanings and disinfection and shall have in his possession a copy of that record, including receipts for such service if performed commercially. *The operator of the truck shall, upon request, present the record of cleanings and disinfection to any law enforcement officer, representative of the New York State Department of Agriculture and Markets, or any representative of the United States Department of Agriculture.*

Section 45.3. Entry upon farms.

No person shall enter any farm in the State of New York with any truck, coop, cage, crate or other conveyance for the purpose of removing or delivering live poultry unless the truck and/or the coop, cage, crate or other conveyance is in a sanitary condition. For the purpose of this Part, sanitary condition shall mean that the truck, coop, cage, crate or other conveyance has been cleaned and disinfected immediately prior to its arrival on the farm and that no other livestock or poultry have used the equipment since it was cleaned and disinfected. The operator of the truck shall maintain a record of the dates of cleaning and disinfection and shall have in his possession a copy of that record, including receipts for such service if performed commercially. *The operator of the truck shall, upon request, present the record of cleanings and disinfection to any law enforcement officer, representative of the New York State Department of Agriculture and Markets, or any representative of the United States Department of Agriculture.*

Section 45.6. Avian influenza control measures.

Except as provided in subdivision (f) of this section:

(a) No live poultry more than seven days old shall be moved into a live poultry market other than by a poultry dealer or poultry transporter holding a valid domestic animal health permit and from flocks which meet the requirements of subdivision (b) of this section.

(b)(1) No live poultry more than seven days old may be moved into a live poultry market unless the poultry dealer or poultry transporter possesses an approved certificate of veterinarian inspection which states that either:

(i) the poultry identified thereon are moving through a poultry dealer or poultry transporter from a source flock which is certified by the state or country of origin as an avian influenza monitored source; or

(ii) the poultry identified thereon are moving through a poultry dealer or poultry transporter from a source flock in which a random sample of [10] 30 birds were [blood-] tested negative for avian influenza within 10 days prior to the date of movement, using [a] an official test approved by the United States Department of Agriculture conducted in a laboratory approved by the United States Department of Agriculture and/ or the State of New York to conduct such testing.

(2) The approved certificate of veterinary inspection required by this subdivision shall remain in the possession of the poultry dealer or poultry transporter moving the poultry directly to a live poultry market and further, the poultry shall be accompanied by a copy of the finalized laboratory report indicating that the poultry tested negative for avian influenza and an invoice setting forth:

(i) the name and address of the poultry dealer or poultry transporter that is moving the poultry;

(ii) the name and address of the live poultry market into which the poultry are being moved;

(iii) the number and type of poultry being moved;

(iv) the avian influenza status of the poultry; and

(v) the date of the movement of such poultry into the market.

(c) No live poultry more than seven days old which is held on premises where within the previous 12 months there has been a positive avian influenza serology, culture or a trace back to said premises of birds that tested positive for avian influenza within the previous 12 months shall be moved into a live poultry market unless the State Animal Health Official of the state or country of origin certifies that:

(1) all birds held on the premises at or after the time of the positive

serology, culture, or trace back and prior to the cleaning and disinfection of the premises were removed to slaughter or slaughtered and the premises were thereafter cleaned and disinfected under official supervision and the replacement flock complies with paragraph (2) of this subdivision; or

(2) tracheal and cloacal swabs were obtained for virus isolation from 150 randomly selected birds in a flock held on such premises or from all of the birds in such flock, whichever is less, and such tests demonstrated that avian influenza was not present, and no bird in such flock exhibited clinical signs of avian influenza in the 45 days preceding the date of sampling. If the birds so tested are waterfowl, then only cloacal swabs shall be required. Such samples may be pooled in groups of up to five samples per culture.

(d) Live poultry that qualify for movement must be kept separate and apart from all other poultry of infected, exposed or unknown health status.

(e) No live poultry shall be moved from a poultry market, unless specifically authorized by the commissioner or his designee. Poultry markets shall not operate as poultry distributors.

(f)(1) A poultry dealer or poultry transporter who buys or sells poultry to be sold or offered for sale in a live poultry market, or transports poultry to a live poultry market shall:

(i) permit authorized representatives of the New York State Department of Agriculture and Markets, the United States Department of Agriculture and/or a State Animal Health Official to directly enter its place of business during normal business hours to inspect the facilities and vehicles; and

(ii) properly maintain, under the supervision of the State Animal Health Official of the state in which it resides, the approved certificates of veterinary inspection required by this section, [together with] a copy of the finalized laboratory test report, and records of the poultry it receives and the poultry it ships;

(iii) immediately make such records available for inspection and/or immediately provide copies thereof when requested to do so by representatives of the New York State Department of Agriculture and Markets, the United States Department of Agriculture and/or the appropriate State Animal Health Official;

(iv) accept only poultry meeting the requirements of this section;

(v) have a facility that can be routinely cleaned and disinfected on a year round basis to prevent survival of avian disease agents including avian influenza;

(vi) possess and utilize a working mechanical crate washer which cleans and disinfects crates between uses on a year round basis, provided such crate washer shall not be located or operated at a live poultry market, auction premises or poultry farming operation and provided further that crates which have been cleaned and disinfected shall not be exposed to or contaminated by crates which have not been cleaned and disinfected;

(vii) use an all-season truck or vehicle wash facility to clean and disinfect trucks or vehicles between uses, provided such all-season truck or vehicle wash facility shall not be located or operated at a live poultry market, auction premises or poultry farming operation; and

(viii) compile, maintain and make available for inspection, for a period of two years, records of the dates and times such crates and trucks or vehicles were cleaned and disinfected.

Text of proposed rule and any required statements and analyses may be obtained from: Dr. David Smith, DVM, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502, email: David.Smith@agriculture.ny.gov

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

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 16 of the Agriculture and Markets Law (Law) provides, in part, that the Commissioner shall have the power to execute and carry into effect the laws of the State and the rules of the Department, relative to the production, transportation, storage, marketing and distribution of food.

Section 18 of the Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department.

Section 72 of the Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 72 also provides that whenever a communicable disease affecting domestic animals shall exist or be brought into this State, the Commissioner shall take measures promptly to suppress the same and to prevent such disease from spreading.

2. LEGISLATIVE OBJECTIVES:

The statutory provisions pursuant to which these regulations are proposed are aimed at controlling, preventing and eradicating infectious and communicable diseases affecting domestic animals in the State. 1 NYCRR Part 45 specifically addresses the control and eradication of avian influenza in the live bird market system in New York. The Department's proposed amendments to Part 45 would further these legislative goals by clarifying and strengthening the Department's avian influenza control program and provide consistency with federal standards.

3. NEEDS AND BENEFITS:

Avian influenza (AI), also known as bird flu, is a respiratory disease of birds caused by a Type A influenza virus. AI viruses are primarily spread by direct contact between healthy and infected birds through respiratory secretions and feces. AI viruses are classified according to the severity of clinical signs seen in infected birds. Low Pathogenic Avian Influenza (LPAI) may cause mild clinical signs but most infected birds do not show any signs of illness. High Pathogenic Avian Influenza (HPAI) causes severe clinical signs with high fatality rates. Two subtypes of LPAI, H5 and H7, have the potential to mutate into the high pathogenic form. Therefore, it is important to monitor for both HPAI and LPAI in poultry operations.

An outbreak of avian influenza can cause major economic losses to the poultry industry. In 1983 – 1984, an outbreak of HPAI occurred in the Northeastern United States resulting in the destruction of more than 17 million birds at a cost of nearly \$65 million. These costs were borne by the US poultry industry, consumers, and taxpayers.

Avian influenza can also pose a threat to public health and safety. Highly pathogenic avian influenza viruses have been associated with occasional illness and death in humans in Asia, Africa, the Pacific, Eastern Europe, and the Near East. Currently, the HPAI H5N1 virus is endemic in poultry in Bangladesh, China, Egypt, India, Indonesia, and Vietnam. Since 2003, the World Health Organization has reported 607 human cases of H5N1 with 358 (or 59%) of those cases being fatal.

New York State is unique for its culturally diverse population with large demand for live poultry. There are more live bird markets in New York State than any other State in the Nation. Currently there are 93 live poultry facilities in New York City; 87 live bird markets, 3 USDA slaughter facilities, and 3 poultry distributors. Joint efforts between State and Federal Animal Health Officials and the poultry industry have led to substantial progress in reducing the amount of avian influenza found in the markets. In 2002, more than 80% of the live bird markets in NYC tested positive for AI. Since then, the Department has adopted a number of regulations to control and eradicate this disease from the live bird marketing system (LBMS). These regulations coupled with voluntary closures and cleaning and disinfection procedures conducted by the poultry markets and distributors have resulted in a significant decrease in the prevalence of AI in the LBMS. In fact, routine surveillance did not identify any positive markets in 2010 or 2011. However, in early 2012, two markets were found to contain poultry infected with H5N2 LPAI.

In the past decade, two New York live bird market (LBM) supply flocks were found to be positive for the H5 subtype of LPAI. The first flock was identified in 2003 and the second in 2007. Both flocks were in Sullivan County. When these findings were reported to the World Organization for Animal Health, many countries embargoed all poultry and poultry products from New York State, causing economic losses to many of our NY poultry producers that depend on international trade. The proposed amendments will strengthen the Department's avian influenza control program procedures and bring the current regulation into alignment with federal standards and similar requirements in place in New Jersey.

The Department's proposed amendments to Part 45 provide that the operator of any vehicle transporting live poultry into the State shall upon request, present the documentation of cleaning and disinfection to any law enforcement officer, representative of the New York State Department of Agriculture and Markets or any representative of the USDA. The current regulations (Section 45.2 Entry into the State and Section 45.3 Entry upon farms) require that truck operators maintain and have in their possession records of the dates of cleaning and disinfection procedures. This addition allows the Department to verify compliance and assist with enforcement of the regulation.

The Department also proposes to amend Part 45, Section 45.6(b)(1)(ii), to require that poultry can only be moved through a poultry dealer or poultry transporter if 30 (existing regulations require 10) birds are tested negative for avian influenza within 10 days prior to the date of movement. This change would bring us into alignment with the United States Department of Agriculture's Uniform Standards for Prevention and Control of H5 and H7 Low Pathogenicity Avian Influenza in the Live Bird Marketing System (August 15, 2008) and is consistent with New Jersey regulations (Chapter 9, Subchapter 2. 2:9-2.1). Testing of 30 birds is consistent with being able to detect disease, if it is present, with a 95% confidence limit if 10% or more of the animals are infected. In addition, the Department proposes amending Section 45.6(b)(1)(ii) to clarify that poultry test

negative for avian influenza using an official test approved by the United States Department of Agriculture (USDA) conducted in a laboratory approved by the USDA and/or New York State.

The proposed amendment [Section 45.6(b)(2)] would also require the poultry dealer or poultry transporter to possess, in addition to the poultry inspection certificate, a copy of the finalized laboratory test report demonstrating that the birds were tested for avian influenza and qualify for transport into the live bird marketing system. In a number of recent cases birds were either 1) moved prior to receipt of finalized test results or 2) moved on a falsified poultry inspection certificate. The laboratory test report will allow the Department and its representatives to verify important information provided on the poultry inspection certificate such as type of poultry tested, number of birds tested, sample collection date, laboratory accession number, test report date, and tester/submitter.

The Department also proposes to amend Part 45, Section 45.6(f)(1)(i) to clarify the current regulation to explicitly state that officials shall be allowed access to regulated entities during normal business hours. This language puts license holders on notice that their premises must be available for routine unannounced inspections during normal business hours.

In conclusion, the Department believes that the proposed amendments are essential disease control measures and will serve to limit the spread of avian influenza. Furthermore, strengthening New York State standards through the proposed amendments will benefit poultry dealers, producers and the market operators by safeguarding their industry.

4. COSTS:

(a) Costs to regulated parties:

This amendment would increase the required number of birds tested at each inspection visit from 10 to 30. The cost per test at the Animal Health Diagnostic Center (AHDC) in New York is \$ 4.25 for blood or serum samples; adding \$85 per flock qualification over the current \$42.50, totaling \$127.50 per flock qualification. The blood or serum test is not reliable for waterfowl; domestic ducks must be tested using the RRT-PCR (real-time reverse transcriptase polymerase chain reaction) test or virus isolation test. Other types of waterfowl (geese, etc.) must be tested using the virus isolation test. Each RRT-PCR test at the NYS AHDC is \$36.75. (up to 11 animal specimens may be pooled into one sample) for an additional test cost of \$73.50 (2 x \$36.75 = \$73.50) to qualify a flock of domestic ducks for movement into the LBMS. Each virus isolation test at the AHDC costs \$60.00 (pooled up to 5 animal specimens per sample). This adds an additional test cost of \$240 (4x \$60.00 = \$240) for each flock of waterfowl other than domestic ducks to qualify for movement. These costs are minimal considering the value of the animals moved into the live bird market system in New York. Additionally, many supply flocks already test 30 birds since the majority of New York-based poultry suppliers also send birds to the New Jersey live bird markets and must meet the 30 bird requirement; these entities would incur no additional cost.

In reference to the amendment to require official testing to be conducted only at federally approved laboratories: We do not anticipate any change in cost since sample collection in New York State for this program is conducted by either an accredited veterinarian or State or Federal officials and all samples are sent to the AHDC (a Federal and State approved laboratory) in New York. This would only affect those testing and shipping birds from out-of-state that are using unapproved laboratories to qualify birds moving into New York.

(b) Costs to the agency, state and local governments:

None.

(c) Source:

The costs are based upon Department data and observations of industry.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendments would not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK:

The proposed amendments would not create any additional paperwork.

7. DUPLICATION:

This regulation does not duplicate any existing federal, state or local government regulation.

8. ALTERNATIVES:

Two alternatives were considered but rejected as either ineffectual or unenforceable. The first alternative considered was not to amend the regulations. This alternative was rejected due to the fact that the present regulations do not adequately protect New York State's live poultry markets and the public from avian influenza. Another consideration was to abandon the current regulation and adopt, by reference, the USDA Uniform Standards in whole. This was rejected as the Uniform Standards do not adequately address the specific concerns unique to the New York live bird market system.

The recent findings of a low pathogenic H5 avian influenza virus in January and February 2012 show that current control measures are not sufficient. The Department believes that the proposed amendments are es-

sential disease control measures, and will further limit the transmission of avian influenza into the markets and clarifies the current regulation. These clarifications and amendments will also aid in the prevention and detection of the novel H1N1 (formerly called "swine flu" virus) as the Department's program will detect any influenza virus found in poultry, not just 'bird flu' of the H5 subtype.

9. FEDERAL STANDARDS:

The federal government has recommendations, not regulations, which will not adequately address the New York live bird market system and avian influenza control.

10. COMPLAINT SCHEDULE:

Immediate compliance by the industry is expected.

Regulatory Flexibility Analysis

1. Effect of rule:

There are seven (7) poultry dealers and/or poultry transporters in New York State, and six (6) supply flocks all of which are small businesses. There are also 11 poultry dealers and/or poultry transporters in other states.

The proposed amendments would have no impact upon local governments.

2. Compliance requirements:

Under the proposal, vehicle operators transporting live poultry in the State would be required to present documentation of cleaning and disinfection (current regulations already require that they have documents in their possession), and the amendments would require that poultry dealers and poultry transporters possess a copy of the finalized laboratory test report demonstrating that the poultry were tested for avian influenza and qualify for transport. The proposed amendments require that poultry moving through a poultry dealer or transporter must be from a source flock in which a random sample of 30 (current regulations require 10) birds tested negative for avian influenza within 10 days prior to date of movement. The amendments require that the poultry that tested negative for avian influenza are tested using an official test approved by the United States Department of Agriculture (USDA) conducted in a laboratory approved by the USDA and/or New York State. Further, the amendments clarify current regulations by explicitly stating that poultry dealers or poultry transporters shall permit authorized officials access to regulated entities during normal business hours.

The proposed amendments would have no impact upon local governments.

3. Professional services:

It is believed that no new professional services will be needed to comply with this rule.

4. Compliance costs:

This amendment would increase the required number of birds tested at each inspection visit from 10 to 30. The cost per test at the Animal Health Diagnostic Center (AHDC) in New York is \$ 4.25 for blood or serum samples; adding \$85 per flock qualification over the current \$42.50, totaling \$127.50 per flock qualification. The blood or serum test is not reliable for waterfowl; domestic ducks must be tested using the RRT-PCR (real-time reverse transcriptase polymerase chain reaction) test or virus isolation test. Other types of waterfowl (geese, etc.) must be tested using the virus isolation test. Each RRT-PCR test at the NYS AHDC is \$36.75. (up to 11 animal specimens may be pooled into one sample) for an additional test cost of \$73.50 (2 x \$36.75 = \$73.50) to qualify a flock of domestic ducks for movement into the LBMS. Each virus isolation test at the AHDC costs \$60.00 (pooled up to 5 animal specimens per sample). This adds an additional test cost of \$240 (4x \$60.00 = \$240) for each flock of waterfowl other than domestic ducks to qualify for movement. These costs are minimal considering the value of the animals moved into the live bird market system in New York. Additionally, many supply flocks already test 30 birds since the majority of New York-based poultry suppliers also send birds to the New Jersey live bird markets and must meet the 30 bird requirement; these entities would incur no additional cost.

In reference to the amendment to require official testing to be conducted only at federally approved laboratories: We do not anticipate any change in cost since sample collection in New York State for this program is conducted by either an accredited veterinarian or State or Federal officials and all samples are sent to the AHDC (a Federal and State approved laboratory) in New York. This would only affect those testing and shipping birds from out-of-state that are using unapproved laboratories to qualify birds moving into New York.

5. Economic and technological feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed.

The proposed amendments are economically and technologically feasible. The Department has determined that many supply flocks already test 30 birds because most New York-based poultry suppliers also send birds to the New Jersey live bird markets and must meet the 30 bird requirement; these entities would incur no additional cost. With regard to the amendment requiring official testing to be conducted only at federally

approved laboratories: We do not anticipate any change in cost since sample collection in New York State for this program is conducted by either an accredited veterinarian or State or Federal officials and all samples are sent to the AHDC (a Federal and State approved laboratory) in New York.

The proposed amendments would have no impact upon local governments.

6. Minimizing adverse impact:

The proposal was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses. The proposed amendments are technical clarifications, or require testing consistent with federal standards or similar requirements in place in New Jersey and many of the regulated entities are already meeting these standards or requirements. Further, the Department forwarded the proposed amendments to the regulated entities and did not receive any comments.

The Department has previously implemented other measures on the regulated parties in an effort to help prevent the spread of avian influenza through the live poultry markets. Those measures include the requirement that only birds from tested or monitored source flocks be allowed into the markets, the prohibition against moving poultry between live poultry markets, and cleaning and disinfecting crates and trucks between usage. Unfortunately, these measures have not been entirely successful, as evidenced by the prevalence of the virus in the markets.

The proposed amendments would expand and strengthen the Department's avian influenza control program by requiring vehicle operators transporting live poultry in the State to present documentation of cleaning and disinfection. Currently vehicle operators are required to have this documentation in their possession. This addition will help the Department verify compliance with and assist with enforcement of the regulation. The proposed amendments would expand and strengthen the Department's avian influenza control program by requiring that poultry dealers and poultry transporters possess a copy of the finalized laboratory test report demonstrating that the poultry were tested for avian influenza and qualify for transport. Poultry are already required to be tested prior to transport. In a number of recent cases, birds were moved either prior to receipt of finalized test results or moved on a falsified poultry inspection certificate. This proposed amendment will allow the Department and its representatives to verify important information provided on the poultry inspection certificate. The proposed amendments require that 30 birds instead of 10 birds test negative for avian influenza prior to movement and that the test is performed by a laboratory approved by the USDA and/or New York State. Testing of 30 birds is consistent with being able to detect disease, if it is present, with a 95% confidence limit if 10% or more of the animals are infected. Most of the regulated parties already test 30 birds because this is the requirement in New Jersey and is consistent with Federal standards. The proposal also includes a technical amendment that clarifies that poultry dealers or transporters shall permit authorized officials access to regulated entities during normal business hours. The Department felt that including this language would clear up any potential confusion on the part of regulated entities. The Department received no response from the regulated entities from its outreach describing the proposed regulatory amendments.

The proposed amendments would have no impact upon local governments.

7. Small business and local government participation:

In light of the continued prevalence of avian influenza in the live poultry markets in New York and prior outbreaks, the Department has been in contact with regulated parties, including small businesses, in an effort to determine how to strengthen the avian influenza control program. The Department sent outreach letters to New York supply flocks and poultry dealers explaining the proposed amendments. No comments were received on the proposed regulatory amendments.

Since the proposal would have no impact on local governments, there has been no outreach with local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

There are six (6) supply flocks and seven (7) poultry dealers and/or poultry transporters in New York State, a number of which are located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

Under the proposal, vehicle operators transporting live poultry in the State would be required to present documentation of cleaning and disinfection (current regulations already require that they have documents in their possession), and poultry dealers and poultry transporters would be required to possess a copy of the finalized laboratory test report demonstrating that the poultry were tested for avian influenza and qualify for transport. Further, the amendments require that poultry moving through a poultry dealer or transporter must be from a source flock in which a random sample of 30 (current regulations require 10) birds tested negative

for avian influenza within 10 days prior to date of movement. The amendments also require that the testing be conducted in a laboratory approved by the United States Department of Agriculture (USDA) and/or New York State using an official test approved by the USDA. The proposed amendments clarify that poultry dealers or poultry transporters shall permit authorized officials access to regulated entities during normal business hours.

3. Costs:

Under the amendments the required number of birds tested at each inspection visit would increase from 10 to 30. The cost per test at the Animal Health Diagnostic Center (AHDC) in New York is \$ 4.25 for blood or serum samples; adding \$85 per flock qualification over the current \$42.50, totaling \$127.50 per flock qualification. The blood or serum test is not reliable for waterfowl; domestic ducks must be tested using the RRT-PCR (real-time reverse transcriptase polymerase chain reaction) test or virus isolation test. Other types of waterfowl (geese, etc.) must be tested using the virus isolation test. Each RRT-PCR test at the NYS AHDC is \$36.75. (up to 11 animal specimens may be pooled into one sample) for an additional test cost of \$73.50 (2 x \$36.75 = \$73.50) to qualify a flock of domestic ducks for movement into the LBMS. Each virus isolation test at the AHDC costs \$60.00 (pooled up to 5 animal specimens per sample). This adds an additional test cost of \$240 (4x \$60.00 = \$240) for each flock of waterfowl other than domestic ducks to qualify for movement. These costs are minimal considering the value of the animals moved into the live bird market system in New York. Additionally, many supply flocks already test 30 birds since the majority of New York-based poultry suppliers also send birds to the New Jersey live bird markets and must meet the 30 bird requirement; these entities would incur no additional cost.

In reference to the amendment to require official testing to be conducted only at federally approved laboratories: We do not anticipate any change in cost since sample collection in New York State for this program is conducted by either an accredited veterinarian or State or Federal officials and all samples are sent to the AHDC (a Federal and State approved laboratory) in New York. This would only affect those testing and shipping birds from out-of-state that are using unapproved laboratories to qualify birds moving into New York.

However, based upon outreach with industry, the Department has determined that 3 of the seven (7) poultry dealers and/or transporters in New York State already test 30 birds. Further, 7 of the seven (7) poultry dealers and/or transporters already use a Federal and State approved laboratory for testing.

4. Minimizing adverse impact:

The proposed amendments were drafted to minimize reporting and testing requirements for all regulated parties, including those in rural areas. The proposed amendments are technical clarifications, or require testing consistent with federal standards or similar requirements in place in New Jersey and many of the regulated entities are already meeting these standards or requirements. Further, the Department forwarded the proposed amendments to the regulated entities and did not receive any comments.

The Department has previously implemented measures on regulated parties in an effort to help prevent the spread of avian influenza through the live poultry markets. Those measures include the requirement that only birds from tested or monitored source flocks be allowed into the markets, the prohibition against moving poultry between live poultry markets and crate and truck cleaning and disinfection between usage. Unfortunately, these measures have not been entirely successful, as evidenced by the prevalence of the virus in the markets.

The proposed amendments would expand and strengthen the Department's avian influenza control program by requiring vehicle operators transporting live poultry in the State to present documentation of cleaning and disinfection. Currently vehicle operators are required to have this documentation in their possession. This addition will help the Department verify compliance with and assist with enforcement of the regulation. The proposed amendments would expand and strengthen the Department's avian influenza control program by requiring that poultry dealers and poultry transporters possess a copy of the finalized laboratory test report demonstrating that the poultry were tested for avian influenza and qualify for transport. Poultry are already required to be tested prior to transport. In a number of recent cases, birds were moved either prior to receipt of finalized test results or moved on a falsified poultry inspection certificate. This proposed amendment will allow the Department and its representatives to verify important information provided on the poultry inspection certificate. The proposed amendments require that 30 birds instead of 10 birds test negative for avian influenza prior to movement and that the test is performed by a laboratory approved by the USDA and/or New York State. Testing of 30 birds is consistent with being able to detect disease, if it is present, with a 95% confidence limit if 10% or more of the animals are infected. Most of the regulated parties already test 30 birds because this is the requirement in New Jersey and is consistent with Federal standards. The proposal also includes a technical amendment that clarifies that poultry dealers or transporters shall permit authorized officials access to

regulated entities during normal business hours. The Department felt that including this language would clear up any potential confusion on the part of regulated entities. The Department received no response from the regulated entities from its outreach describing the proposed regulatory amendments.

5. Rural area participation:

In light of the continued prevalence of avian influenza in the live poultry markets in New York, the Department has been in contact with regulated parties, including those in rural areas, in an effort to determine how to strengthen the avian influenza control program. The Department sent an outreach letter to the regulated entities explaining the proposed regulatory amendments. No comments were received.

Job Impact Statement

The amendments will expand the Department's avian influenza control program by requiring operators of vehicles transporting live poultry in the State to present documentation of cleaning and disinfection (current regulations already require that they have documents in their possession), require poultry dealer or poultry transporter to possess a copy of the finalized laboratory test report demonstrating that the poultry were tested for avian influenza and qualify for transport, require that 30 (instead of 10) birds tested negative for avian influenza within 10 days prior to movement through a poultry dealer or transporter, clarify that the poultry tested negative for avian influenza using an official test approved by the United States Department of Agriculture (USDA) conducted in a laboratory approved by the USDA and/or New York State, and clarify the current regulations to explicitly state that officials shall be allowed access to regulated entities during normal business hours.

The amendments will have no detrimental impact on jobs and employment opportunities in New York State. In fact, the proposed amendments will strengthen the Department's avian influenza control program procedures and bring the current regulation into alignment with federal standards and similar requirements in place in New Jersey. Further, strengthening New York standards through the proposed amendments will benefit poultry dealers, producers and the market operators by safeguarding their industry. If nothing is done about controlling the spread of avian influenza to live poultry markets from poultry dealers and poultry transporters, it is possible that outbreaks of the disease will continue. Prior outbreaks have prompted embargoes on poultry and poultry products.

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

Amendment of Parts 48, 53 and 59 of Title 1 to Repeal Obsolete or Unenforced Regulations

I.D. No. AAM-44-13-00005-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 repeal Part 48, sections 53.5(d), 59.2(b)(8), 59.3(b)(6); and renumbering of sections 59.2(b)(9)-(17) and 59.3(b)(7)-(15).

Statutory authority: Agriculture and Markets Law, sections 18, 72, 74, 75 and 89

Subject: Amendment of Parts 48, 53 and 59 of Title 1 to repeal obsolete or unenforced regulations.

Purpose: To repeal regulations that are obsolete or not being enforced.

Text of proposed rule: Part 48 is repealed.

Subdivision (d) of section 53.5 of Part 53 is repealed.

Paragraph (8) of subdivision (b) of section 59.2 of Part 59 is repealed. Paragraphs (9)-(17) of subdivision (b) of section 59.2 are renumbered (8)-(16).

Paragraph (6) of subdivision (b) of section 59.3 of Part 59 is repealed. Paragraphs (7)-(15) of subdivision (b) of section 59.3 are renumbered (6)-(14).

Text of proposed rule and any required statements and analyses may be obtained from: Dr. David Smith, Department of Agriculture and Markets, 10B Airline Drive, Albany NY 12235, (518) 457-3502, email: David.Smith@agriculture.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

The Department has considered the proposed amendments to Parts 48, 53 and 59 and has determined that no person is likely to object to the rule as written.

The proposed amendment to Part 48 would repeal provisions that relate

to testing cattle for tuberculosis and sanitizing rail cars used to transport cattle to slaughter. This Part no longer applies to any person. New York has not had a case of tuberculosis in cattle for 20 years. Furthermore, cattle are no longer transported by rail and tuberculosis cases are not handled in this manner. Any suspected case of tuberculosis in cattle is euthanized on the farm or sent in a sealed truck to slaughter. Cleaning and disinfection for conveyances used to transport livestock with tuberculosis are mandated by Title 9 of the Code of Federal Regulations, Part 50. Because section 48.1 is obsolete and does not apply to any person, no one is likely to object to its repeal. Consensus rule making is appropriate under State Administrative Procedure Act § 102(11)(a).

The proposed amendment to Part 53 would repeal subdivision (d) of section 53.5, which requires that cattle being imported into New York be tested for anaplasmosis. This is a non-controversial technical change to the regulation. The anaplasmosis testing requirement was promulgated at a time when New York was considered free of the disease, and outbreaks were so rare that an import-testing requirement made sense. Recently, cattle have been testing positive for the disease in New York, rendering the import testing ineffective and superfluous. Accordingly, the repeal of subsection 53.5(d) will conform Part 53 to the present state of agriculture in the state. No one is likely to object to such a minor, technical change. Consensus rule making is therefore appropriate under State Administrative Procedure Act § 102(11)(c).

The proposed amendment to Part 59 would repeal paragraph (8) of subdivision (b) of section 59.2 and paragraph (6) of subdivision (b) of section 59.3. These paragraphs require, respectively, that only licensed veterinarians administer mammalian encephalitis vaccines and that anyone who prepares, sells or distributes mammalian encephalitis vaccines submit a report to the Commissioner of the Department. The proposed amendment would also renumber subdivisions 59.2(b) and 59.3(b). Mammalian encephalitis vaccines are available over the counter and the use and reporting requirements for mammalian encephalitis vaccines have not been enforced by the Department. While the Department encourages purchasers of the vaccine to consult with a veterinarian before administering it, the Department allows the vaccine's use without veterinarian assistance and without reporting requirements to encourage increased vaccination. Because these paragraphs are not currently being enforced against any person, no one is likely to object to their repeal. Accordingly, consensus rule making is appropriate under State Administrative Procedure Act § 102(11)(c).

Job Impact Statement

1. Nature of impact:

The proposed amendment of Part 48 would repeal obsolete provisions that are not currently being applied to any person. Accordingly, no job impact is anticipated.

The proposed amendment of Part 53 would remove an artificial barrier to the importation of cattle to New York State. This will positively affect jobs and employment opportunities, and make New York State more competitive in the livestock industry.

The proposed amendment of Part 59 will remove restrictions on the use and sale of mammalian encephalitis vaccine that have not been enforced by the Department. Accordingly, no job impact is anticipated.

2. Categories and numbers affected:

The proposed amendment of Part 48 would repeal obsolete provisions that are not currently being applied to any person. Accordingly, no job impact is anticipated.

The proposed amendment of Part 53 will give additional opportunities to import cattle to new and existing dairy and beef farms. However, the impact is not anticipated to be significant enough to influence employment.

The proposed amendment of Part 59 will remove restrictions on the use and sale of mammalian encephalitis vaccine that have not been enforced by the Department. Accordingly, no job impact is anticipated.

3. Regions of adverse impact:

The proposed amendment of Part 48 would repeal obsolete provisions that are not currently being applied to any person. Accordingly, no job impact is anticipated.

The proposed amendment of Part 53 is not anticipated to have an adverse impact on any region.

The proposed amendment of Part 59 will remove restrictions on the use and sale of mammalian encephalitis vaccine that have not been enforced by the Department. Accordingly, no job impact is anticipated.

4. Minimizing adverse impact:

The proposed amendment of Part 48 would repeal obsolete provisions that are not currently being applied to any person. Accordingly, no job impact is anticipated.

The proposed amendment of Part 53 is intended to minimize the adverse impact on existing jobs of an obsolete importation requirement and to promote the development of new employment opportunities.

The proposed amendment of Part 59 will remove restrictions on the use and sale of mammalian encephalitis vaccine that have not been enforced by the Department. Accordingly, no job impact is anticipated.

5. Self-employment opportunities:

The proposed amendments of parts 48, 53 and 59 are not anticipated to have a measurable impact on opportunities for self-employment.

Office of Children and Family Services

NOTICE OF ADOPTION

Child Day Care Regulations

I.D. No. CFS-26-13-00012-A

Filing No. 994

Filing Date: 2013-10-15

Effective Date: 2013-10-30

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

Action taken: Repeal of Parts 413, 416 and 417; and addition of new Parts 413, 416 and 417 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 390

Subject: Child Day Care Regulations.

Purpose: To revise and update the family and group family day care regulations.

Substance of final rule: After a rigorous review of the current regulatory standards for family day care and group family day care programs and research on such issues as emergency preparedness, injuries related to supervision, national health and safety performance standards and guidelines for early care and education programs, the Office proposes numerous changes to Title 18 of the New York State Code of Rules and Regulations (NYCRR) §§ 413, 416 and 417.

The Office's main objectives in proposing changes to current family-based child day care regulations is to strengthen health and safety standards, correct conflicting regulatory language discovered in existing citations relative to the administration of medication, to update the regulations with recent changes made to Social Services Law and the NYS Building Code, and to make the regulations easier to understand.

One major category chosen for modifications is the administration of medication in group family day care and family day care. These changes include amendments made as a result of lessons learned since 2005 when the administration of medication regulations were first adopted. The proposed regulations adhere to the approach that administering medications to children is a serious responsibility, performed best by those who have oversight by a health care consultant and training on administering all types of medications. The proposed regulatory changes focus on when permission to administer medications is required by a parent and a health care provider and when a child's dose of medication can be altered without requiring a new prescription and added cost. The proposed regulations also answer issues not addressed in 2005 such as, What is permitted when a health care consultant ends his/her affiliation with the program? May a provider refuse to administer a medication? May a Provider stock medication? When may a provider administer an auto injector or allow a child to carry an asthma inhaler?

A second category of changes focuses on obesity prevention. On this topic, the Office worked in collaboration with the Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity; and the NYS Department of Health. The group discussed best practice and the practicality of adding obesity prevention measures to child day care regulations. As a result of combined efforts, the Office was able to craft balanced regulatory requirements for providers that would also allow for parent choice. The regulations will require that low-fat milk, water or 100% juice be served, unless the parent supplies the provider with alternatives. In addition, children must have physical activity every day, and screen time activities must be limited during the child day care program.

Health, safety and emergency preparedness was also a focus in drafting proposed changes. The proposed regulations address emergency evacuation plans and drills for sheltering in place, additional smoke detectors inside sleeping areas, carbon monoxide alarms, changes in technology around phone service, safe storage of firearms, shotguns and rifles and safe sleep practices for infants.

Another key proposed change concerns adoption of an orientation ses-

sion for applicants and a new training requirement for owners operating multiple sites. The Office proposes that all applicants seeking a family-based child day care license or registration complete an on-line orientation program prior to receiving an application. In addition, the Office proposes a requirement for all owners who operate multiple family-based child day care programs to receive training in administration and management of multiple sites.

Supervision is the most important element of child care services. Some would argue it is the central safety component in keeping children safe from harm. The meaning and significance of competent supervision, as a way of protecting children from injury, was studied and the Office proposes rewording the term to include the need to be close enough to redirect a child and to be aware of each child's ongoing activity.

A final category focuses on the proposed requirement for providers to be the main caregivers in family-based programs. In recent years, there has been an escalation in the number of providers who open multiple family-based programs. Providers then hire "on-site providers" to operate the programs. A number of safety issues arise from this arrangement, not the least of which are: un-cleared caregivers supervising children, un-trained providers starting in their roles as primary caregivers without health and safety training, and increases in enforcement cases with regard to these programs. Existing programs will be grandfathered, new applicants will be denied.

In addition to the categories above, the Office is proposing changes to the length of the regulations. This is more about breaking the regulations up into separate citations than it is about requiring additional standards. This change is significant to providers for the following reason: When an inspector cites a provider for a violation of regulation, that violation is listed on the Office website. If the regulatory citation includes multiple requirements, the web user is unable to distinguish what part of the regulatory citation was violated. This change will alleviate this problem.

Final rule as compared with last published rule: Nonsubstantive changes were made in Parts 416 and 417.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793

Revised Regulatory Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement ("RIS"). The revisions to the last published rule merely provide clarifications in the text and correct technical errors, which requires no change to the Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments. The revisions to the last published rule merely clarify the text and correct technical errors, which requires no change to the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis. The revisions to the last published rule merely clarify the text and correct technical errors, which requires no change to the Rural Area Flexibility Analysis.

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement ("JIS"). The revisions to the last published rule merely provide clarifications in the text and correct technical errors, which requires no change to the Job Impact Statement.

Initial Review of Rule

As a rule that requires a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2016, which is no later than the third year after the year in which this rule is being adopted.

Assessment of Public Comment

This assessment responds to the comments received on the Proposed Regulations for Parts 413, 416, and 417 of Title 18 of the New York State Code of Rules and Regulations. The Notice of Proposed Rule Making was contained in the State Register issued on June 26, 2013.

The Office of Children and Family Services (OCFS) received three-hundred-fifty-seven (357) responses during the public comment period. Responses were received from Child Care Resource & Referral Agencies, health care consultants, parents, child care providers, family-based unions, licensors, contract agencies, and others. Most responses included comments on more than one provision of the proposed regulations. Comments collected through the website allowed responders to leave text and/or a

check mark to agree or disagree. OCFS counted each text and check mark as a comment. From the 357 responses received, there were a total of 3,223 comments. Every comment was processed and considered by OCFS in this assessment. The overall number of comments in support of the proposed revisions far exceeded the number of comments received in opposition thereto.

In this assessment, OCFS combined similar comments from numerous commenters leaving written opinion for the purpose of the assessment and response thereto. The consolidated comments taken from text and OCFS responses are grouped in categories below.

In undertaking this effort, OCFS recognized the need to make minor clarifications to afford clarity to its intent and corrected punctuation where needed. No substantive changes have been made in the process.

416/417.2 Procedures for Applying and Renewing licenses and registrations:

There were two comments submitted opposing the requirement to prove residency in the child care home and the requirement for initial inspections, noting cost. Proof of residence can be as simple as producing a driver's license, or combination of other documents. OCFS inspections are free and all other inspections for well water and heating devices are preventative safety measures. Based on a review of comment, no changes will be made.

416/417.3 Building and Equipment:

Eleven responders supported the change requiring that providers update the Office when making changes to the space used for program activities. Seven responders thought the language was vague. After review, OCFS determined that the language is clear; therefore, no changes will be made to the proposed regulations.

Three comments stated that it is difficult to comply with regulations when they point to requirements set by a governmental agency other than OCFS. OCFS plans to assist providers by posting the final regulations to its website and hyperlink to the requirements in external regulations. No changes to the proposed regulations are required based on these comments.

416/417.4 Fire Protection:

Twelve responders supported the need for a smoke detector within rooms used for napping. Eight responders opposed the additional requirement. OCFS reviewed this comment and determined that this inexpensive requirement adds a needed layer of protection and believes the language is clear. No changes will be made to proposed regulation based on this comment.

Five responders supported language requiring that alternate fire drills use the secondary egress, one responder opposed. OCFS reviewed this issue and will not change proposed regulation based on this comment.

416/417.5 Safety:

Twenty-two responders opposed "shelter in place" regulatory language as being too vague. One group suggested that protocols should be developed in collaboration with unions. Others thought two drills a year resulted in too much paperwork. OCFS will develop guidance on this important safety protocol and will provide a short form for use during a drill. OCFS's review of comment on this issue resulted in no changes being made.

Thirty-seven responders opposed the requirement to leave a note on the door for parents when a change in evacuation site is needed. The regulation clearly states that this is not required if an immediate threat precludes the program from compliance. No changes will be made.

Six responders were opposed to allowing day care children to use residential pools. Six responders suggested that pool alarms be mandatory. OCFS has in place safety measures for pool use and alarm requirements are covered in NYS code; therefore no changes are indicated.

Twenty responders opposed language permitting cell phone use as the primary home phone. OCFS researched this issue and learned that most landline phones lose service during power outages. This negates the reason to require landline phones, and as a result no changes are indicated.

Nine responders opposed the requirement to have a cushioned surface under play equipment, citing expensive and need. Research on this matter from the CPSC indicates that injuries can be prevented by installing cushioned surfacing. No changes are indicated as a result of comment.

Thirteen responders opposed the ban on trampoline use. Based on research that shows the number of injuries to young children using trampolines, OCFS will retain this prohibition and will make no changes.

There were forty-seven comments received concerning the home-based child care provision regarding firearms. Of the thirteen responders who supported the provision, seven supported it as written. Six responders supported the provision but suggested additional restrictions, such as banning all firearms in child care homes, requiring that OCFS approve written firearm safety plans and requiring that the provider notify OCFS whenever a firearm is accessed during day care hours. Four responders wanted to know if the provision restricted a parent's possession of firearms in the day care home. Eight responders suggested that OCFS define what types of emergencies would permit a provider to access a firearm. Four respond-

ers opposed the language allowing a provider to access a firearm in an emergency. Of the eighteen responders who opposed the provision, fifteen wrote that gun ownership is neither the state's nor the parent's business to know, and three wrote that the provision violated their constitutional rights. OCFS reviewed the comments received on this important safety issue and will make no changes to regulatory language.

416/417.6 Transportation:

Five responders opposed changes citing that the Department of Motor Vehicles should be the regulatory body. No change to proposed regulation is indicated based on comment.

416/417.7 Program Requirements:

OCFS received support of its efforts to curb childhood obesity from the NYS Department of Health and thirty-seven other responders. This included an endorsement for required physical activity, reduction in screen time and healthy beverages. Seven responders were opposed to additional mandates. No changes will be made based on this comment.

Twenty-eight responders oppose regulations prohibiting children from sleeping in car seats and other like devices. Eight responders were in support of the changes. Based on a review of comment, OCFS will not change its "safe sleep" measures.

Several responders opposed restrictions on stacking mats and cots. The proposed regulation allows these items to be stacked. OCFS will add the word "stacked" to indicate that stacking is permitted. While offering clarity, this is not a substantive change.

Fifty-two responders supported regulation limiting the use of electronic media while children nap, while fifty-three opposed the prohibition. OCFS's review of these comments indicates that its intent was unclear and will adjust the language while making no substantive language changes.

416/417.8 Supervision:

Nineteen responders supported the change in definition of competent supervision, while fourteen opposed it. OCFS reviewed comment and believes that the definition is clear and is based on the realities of the work. Based on a review of this comment, no changes will be made to proposed regulation.

Nine responders opposed limits on the number of absences providers may have. One responder asked that the word "assistant" be removed. OCFS defines short and long term absences so that the provider remains the primary caregiver at the program. OCFS will remove the word "assistant" from the requirement, as it may confuse the main objective, which is to have the owner/provider as the main caregiver onsite.

Seven responders opposed the maximum capacity language, stating it was confusing. A review of statute and comment indicated that the removal of one sentence will clear up any misunderstandings and align the two bodies (Statute and Regulation) containing the mandate.

Fifty-six responders opposed regulation restricting the use of cell phones and other activities that distract attention from supervision of children. OCFS is revising the wording in this section but will make no substantive change to the intent of this rule.

416/417.9 Behavior Management:

Three responders opposed the ban on physical restraint. OCFS's goal is to have children with special needs receive early intervention services. Restraint strategies are far too likely to harm small children. No change is indicated based on comment received.

416/417.10 Child Abuse and Maltreatment:

Emergency regulations posted in the State Register impact day care regulations by mandating certain database checks against the Justice Center's Staff exclusion list. This requirement has been added. Based on past precedent, however, this is not considered a substantive change.

416/417.11 Health and Infection Control:

Thirty responders oppose the length of this section. Three responders opposed the reading level needed to understand regulations. Health and infection control can be a complex responsibility. The regulations seek to cover what issues are relevant. Reading level associated with this section is somewhat skewed by the inclusion of medical terms. OCFS reviewed this comment and no changes will be made.

While three responders opposed regulation that would end subsequent and routine medical exams and TB testing, eighteen responders endorsed their termination. OCFS's research on the matter determined the direction taken in this matter. No changes will be made based on comment received.

Thirty responders opposed mandating that substitutes complete medical exams and TB tests; eighteen were in favor. Those opposed cited cost and lack of medical necessity. These medical attestations are an important clearance tool; therefore no changes will be made based on comment.

Three responders opposed the use of the terms "sanitize" or "disinfect". OCFS included both terms to cover all necessities. Requiring that providers use only Environmental Protection Agency (EPA) registered products assists providers in choosing appropriate products.

Five responders opposed the limited use of hand sanitizers and wanted hand sanitizers to replace soap and water. OCFS's research on this issue does not support a change based on comment received.

416/417.12 Nutrition:

Ten responders supported healthy beverage regulations and sixteen opposed the requirements. OCFS reviewed all comments and no changes are indicated.

Fourteen providers opposed the requirement to share healthy food/beverage information with parents. Six responders were in support. OCFS and DOH are producing a brochure for dissemination; however, no changes will be made to the requirement.

416/417.13 Staff Qualifications:

Twenty-six responders were opposed to requiring substitute caregivers to have reference checks and experience. Because of the important role substitutes play, OCFS stands by its proposal; therefore no changes will be made based on comment.

416/417.14 Training:

Three responders incorrectly read that health and safety training would be required every two years. OCFS will clarify its intent but make no substantive changes to this citation.

Ten responders supported the elaboration of topic areas. Eleven others noted that training is too expensive and topics too limited. A statutory change would be needed; therefore no changes will be made in regulation.

Five responders supported the change allowing some training hours to count in a cross-over period between licensing/registration periods.

416/417.15 Management and Administration:

Nine responders supported the bar against one provider operating multiple family programs. Forty responders objected to the regulation. OCFS researched this matter and no changes are indicated.

Four responders opposed the time frame set to begin the clearance process for new household members. OCFS is making no change based on this comment.

Four responders supported the regulations against physical violence to Office representatives, one opposed. OCFS reviewed those comments and no changes are indicated.

Thirty-six responders opposed recording arrival/departure times of children and staff because of the paperwork this incurs. OCFS will accept attendance sheets used by other agencies, as long as it depicts accurate times. No changes will be made based on comment.

413 Definitions, Enforcement and Hearings:

Six responders supported the changes to role definitions; two opposed. The Office reviewed those comments and no changes are indicated.

Eight responders supported the clearer language in 413, increases in fines, and ability of OCFS to suspend. Seven opposed the ability of OCFS to fine. OCFS reviewed all comments and no changes are indicated.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-06-13-00003-A

Filing No. 975

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text or summary was published in the February 6, 2013 issue of the Register, I.D. No. CVS-06-13-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-06-13-00004-A

Filing No. 980

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the February 6, 2013 issue of the Register, I.D. No. CVS-06-13-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-11-13-00002-A

Filing No. 977

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the March 13, 2013 issue of the Register, I.D. No. CVS-11-13-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-11-13-00003-A

Filing No. 979

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To add a subheading and classify positions in the exempt and non-competitive classes.

Text or summary was published in the March 13, 2013 issue of the Register, I.D. No. CVS-11-13-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Supplemental Military Leave Benefits**

I.D. No. CVS-15-13-00009-A

Filing No. 981

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of sections 21.15 and 28-1.17 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Supplemental military leave benefits.

Purpose: To extend the availability of supplemental military leave benefits for certain New York State employees until December 31, 2013.

Text or summary was published in the April 10, 2013 issue of the Register, I.D. No. CVS-15-13-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-16-13-00009-A

Filing No. 976

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the April 17, 2013 issue of the Register, I.D. No. CVS-16-13-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-16-13-00010-A

Filing No. 974

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the April 17, 2013 issue of the Register, I.D. No. CVS-16-13-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-16-13-00011-A

Filing No. 978

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the April 17, 2013 issue of the Register, I.D. No. CVS-16-13-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-22-13-00001-A

Filing No. 983

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify positions in the exempt class.

Text or summary was published in the May 29, 2013 issue of the Register, I.D. No. CVS-22-13-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-22-13-00002-A

Filing No. 973

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To add a subheading and to classify a position in the exempt class.

Text or summary was published in the May 29, 2013 issue of the Register, I.D. No. CVS-22-13-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-22-13-00003-A

Filing No. 972

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the non-competitive class.

Text or summary was published in the May 29, 2013 issue of the Register, I.D. No. CVS-22-13-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-22-13-00004-A

Filing No. 985

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class.

Text of final rule: Text of proposed rule should have read:

Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Workers' Compensation Board," by decreasing the number of positions of District Administrator from 9 to 8.

Notice of Proposed Rule Making had also indicated an additional position of Special Assistant was being added to the exempt class.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 1.

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS statements.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-22-13-00005-A

Filing No. 982

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class and to classify a position in the non-competitive class.

Text or summary was published in the May 29, 2013 issue of the Register, I.D. No. CVS-22-13-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-22-13-00006-A

Filing No. 984

Filing Date: 2013-10-10

Effective Date: 2013-10-30

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text or summary was published in the May 29, 2013 issue of the Register, I.D. No. CVS-22-13-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Security Guard Instructor Standards and Qualifications

I.D. No. CJS-44-13-00001-P

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

Proposed Action: Repeal of Part 6029; and addition of new Part 6029 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13), 841-b(1) and 841-c(3)

Subject: Security guard instructor standards and qualifications.

Purpose: Increase the standards and qualifications for certification as a security guard training instructor.

Substance of proposed rule (Full text is posted at the following State website: <http://www.criminaljustice.ny.gov>): Executive Law section 841-c(3) authorizes the Commissioner of the Division of Criminal Justice Services (commissioner) to certify and issue appropriate certificates to qualified security guard instructors. Executive Law section 841-b(1)(c) authorizes the Security Guard Advisory Council (council) to recommend to the commissioner rules and regulations with respect to the qualifications for instructors at approved security guard training schools.

The general intent of the proposed amendments is to clarify and enhance existing regulations. The training requirements recommended by the council and adopted by the commissioner are promulgated in 9 NYCRR Parts 6027, 6028, and 6029, with respect to security guard training courses, the approved security guard training schools, and the security guard instructor standards and qualifications. These regulations specify the requirements necessary for the certification of an instructor.

Part 6029 of 9 NYCRR is repealed and a new Part 6029 is added to read as follows:

Summary of Part 6029

Security Guard Instructor Standards and Qualifications

6029.1 Definitions.

Some definitions were clarified. The definitions certified security guard instructor or certified security guard instructor and certified armed security guard instructor or armed security guard instructor were combined into one term. The following definitions were added: division, defects, successfully complete or successfully completed and public entity. The definition security guard supervisor or manager was deleted as it was not used in this Part.

6029.2 Certification of security guard instructor, special security guard instructor and armed security guard instructor.

Header changed to better reflect its content. This section now reads as follows:

Instructor certification for security guard instructor, special security guard instructor and armed security guard instructor may be granted by the commissioner upon demonstration of instructor competency and subject matter expertise and payment of an application fee, in accordance with the minimum requirements established by this Part.

6029.3 Minimum requirements for security guard instructor certification.

This section includes more specific information required or requested by the commissioner prior to certification of a security guard instructor. For instance, the commissioner shall consider additional factors including, but not limited to: whether the applicant has had a security guard, special security guard or armed security guard instructor, or security guard training school application or renewal application denied for cause, or is the instructor at a school where the security guard school application or renewal application of such school has ever been denied for cause pursuant to Part 6028 of this Title, and the date and nature of such denial; whether the applicant has had a security guard, special security guard or armed security guard instructor certification, or security guard training school approval suspended or revoked, or is the instructor at a school where the approval of such school has ever been or is suspended or revoked pursuant to Part 6028 of this Title, and the date and nature of such suspension or revocation; whether the applicant has ever been convicted of a crime, and the date and nature of the offense; and whether there are any criminal charges pending against the applicant.

6029.4 Requirements for special security guard instructor certification.

This section now reads as follows:

Special security guard instructor certification may be granted at the discretion of the commissioner upon written application in cases in which the applicant meets the minimum requirements for security guard instructor certification as set forth in section 6029.3 of this Part and has advanced academic credentials and qualifying experience in addition to having demonstrated technical expertise.

6029.5 Requirements for armed security guard instructor certification.

This section includes more specific information required or requested by the commissioner prior to certification of an armed security guard instructor.

6029.5-A Exemptions.

Provides that some of the requirements for the existing or prospective security guard, special security guard or armed security guard instructor may be waived by the commissioner if the existing or prospective security guard, special security guard or armed security guard instructor is employed with or at a public or private educational institution operating under the purview of the New York State Education Department or an equivalent agency in another jurisdiction, a public entity, an entity employing security guards on a proprietary basis for its own use, or an educational

institution conducted on a not-for-profit basis by firms or organizations, provided that such instruction is offered at no charge; or is an employed police or peace officer in good standing.

6029.6 Term and renewal of certifications.

This section has been expanded to include reasons which the certification of a security guard instructor may not be renewed and provides for an opportunity for a hearing. This section also clarifies that an instructor certification shall be valid only in the possession of the instructor to which it is issued and that a completed Security Guard Instructor Renewal Application form must be submitted no more than sixty nor less than thirty days prior to the expiration date of the instructor certification.

6029.7 Suspension and revocation of certification.

Header changed to better reflect its content. This section includes reasons which the commissioner can suspend the certification of a security guard and provides for an opportunity to cure. This section also includes additional reasons which the commissioner can revoke a certification: the commissioner determines that there are defects in the instruction provided by a instructor; the instructor is charged with a felony or misdemeanor and the conduct constituting the offense was performed in the name of or in behalf of an approved security guard training school, or, in the discretion of the commissioner, the conduct of the instructor bears on the integrity of the division; the security guard instructor application contained a material false statement or omission, the truth or inclusion of which would have resulted in denial of the application pursuant to this Part; or any other cause for which the commissioner deems the revocation necessary. In addition, section 6029.7(c) of the existing regulations provides, "Within 30 days of the receipt of said notice, the individual may forward a written request to the commissioner, for a hearing to be held by the council to determine whether the certification should be revoked." This was revised to read "Within fifteen (15) days." Furthermore, this section states that the hearing shall be held at the next meeting of the council, and clarifies that the hearing shall be conducted in accordance with the provisions of the state administrative procedure act and that following deliberation, and in accordance with the open meetings law, the council shall submit its recommendation to the commissioner. Following receipt of the council's recommendation, and within 90 days of the date of the hearing, the commissioner shall forward to the individual the decision and the reasons given for such decision. The commissioner makes the final decision, notwithstanding the council's recommendation. The commissioner, and not the council, shall be responsible for setting any penalty. A revocation shall remain in effect for at least one year following the decision, depending upon factors enumerated in sections 6029.3(c) and 6029.5(c) of this Part and other factors, and upon a showing of corrective action. Moreover, during an on-site inspection of an approved security guard training school by the commissioner, the commissioner may suspend an instructor certification pending revocation if the violation or misconduct warrants such action.

6029.8 Conducting a security guard training course.

This section was added for clarification.

6029.9 Schedule of fees.

This section provides that the initial application fee for security guard instructor certification, special security guard instructor certification, or armed security guard instructor certification is \$500.00.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, NYS Division of Criminal Justice Services, Alfred E. Smith Office Building, South Swan Street, Albany, NY 12210, (518) 485-0857, email: Natasha.Harvin@dcs.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: Executive Law (EL) sections 837 (13), 841-b(1) and 841-c (3). EL § 841-b(1) authorizes the Security Guard Advisory Council (Council) to recommend to the Commissioner of the Division of Criminal Justice Services (Commissioner) rules and regulations with respect to, among other things, the minimum qualifications for instructors at approved security guard training schools. EL § 841-c(3) authorizes the Commissioner to certify, as qualified, instructors of security guards and issue appropriate certificates to such instructors. EL § 837(13) authorizes the Division of Criminal Justice Services (Division) to adopt, amend or rescind regulations "as may be necessary or convenient to the performance of the functions, powers and duties of the [D]ivision."

2. Legislative objectives: The training requirements recommended by the Council, and adopted by the Commissioner, are promulgated in 9 NYCRR Parts 6027, 6028 and 6029, with respect to security guard training courses, the approved security guard training schools, and the security guard instructor standards and qualifications. These regulations specify the requirements necessary for the certification of an instructor. The general intent of the proposed amendments is to clarify and enhance existing regulations.

3. Needs and benefits: The Security Guard Act of 1992 requires the registration and training of security guards in New York State. The Division provides administrative oversight for mandated security guard training. It has been determined that the integrity of the Security Guard Program demands that those involved in the training of security guards be held to high ethical standards and that students be trained in accordance with applicable laws, rules and regulations, Division requirements, and policies and procedures. The proposed revisions, which are endorsed by the Council, will increase the standards and qualifications for certification as a security guard training instructor.

The proposed rule requires that each applicant requesting security guard instructor certification shall:

(1) satisfy minimum qualification criteria relating to education, teaching experience, formal training, and security experience as determined by the Commissioner, including but not limited to the following:

- (i) possess a high school diploma or its equivalent;
- (ii) possess standards of good character, integrity, and trustworthiness; and
- (iii) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier agency; or
- (iv) maintain a valid security guard registration card issued by the Department of State; or
- (v) maintain a valid armed security armored car guard registration card issued by the Department of State; or
- (vi) be employed as police or peace officer in good standing.

Additionally, these regulations include more specific information required or requested by the Commissioner prior to certification of a security guard instructor. For instance, the Commissioner shall consider additional factors including, but not limited to: whether the applicant has had a security guard, special security guard or armed security guard instructor, or security guard training school application or renewal application denied for cause, or is the instructor at a school where the security guard school application or renewal application of such school has ever been denied for cause, and the date and nature of such denial; whether the applicant has had a security guard, special security guard or armed security guard instructor certification, or security guard training school approval suspended or revoked, or is the instructor at a school where the approval of such school has ever been or is suspended or revoked, and the date and nature of such suspension or revocation; whether the applicant has ever been convicted of a crime, and the date and nature of the offense; and whether there are any criminal charges pending against the applicant.

Furthermore, these regulations require the certified instructor to adhere to and engage in proper business practices; and ensure that the security guard training course is compliant with applicable laws, rules and regulations, Division requirements, and policies and procedures.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: The current rule established a \$500 initial security guard instructor application fee and a \$250 security guard instructor renewal fee. These fees will remain the same under the proposed amendments.

The proposed rule requires that each applicant requesting security guard instructor certification shall:

(1) satisfy minimum qualification criteria relating to education, teaching experience, formal training, and security experience as determined by the Commissioner, including but not limited to the following:

- (i) possess a high school diploma or its equivalent;
- (ii) possess standards of good character, integrity, and trustworthiness; and
- (iii) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier agency; or
- (iv) maintain a valid security guard registration card issued by the Department of State; or
- (v) maintain a valid armed security armored car guard registration card issued by the Department of State; or
- (vi) be employed as police or peace officer in good standing.

For instance, pursuant to Article 7-A of the General Business Law (GBL), in order to qualify for a security guard registration card, GBL § 89-h(10) requires the payment of: (1) a fee of \$36 to the Department of State (DOS) for processing of the application, investigation of the applicant and for the initial biennial registration period; and (2) a fee of \$75 to the Division pursuant to section 837(8-a) of the Executive Law for the cost of the search of the Division's criminal history records and the return of a report thereon to DOS. Thus, if a security guard training instructor does not already possess a valid registration card, the rule will impose a cost of \$111 for compliance.

However, the process to become a registered guard is affordable and a registration card is easily attainable if there is no criminal background.

Further, this requirement will ensure that security guard training instructors, who will have access to students' sensitive personally identifiable information, have gone through a background check.

The remaining requirements are oversight in nature; any associated costs are expected to be negligible.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Regulatory oversight will be accomplished using existing resources.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The fees associated with obtaining a security guard registration card are set forth in GBL § 89-h.

5. Local government mandates: The proposed rule does not apply to local governments.

6. Paperwork: Under the proposed rule, during an on-site inspection of an approved security guard training school by the Commissioner, the Commissioner may suspend an instructor certification pending revocation if the violation or misconduct warrants such action. To invoke the suspension, the Commissioner shall provide the instructor with a notice of intent to revoke the instructor certification and the reasons for such action on a form.

7. Duplication: This proposal does not duplicate any other existing State or federal requirements.

8. Alternatives: Maintaining the current instructor certification requirements was considered, but rejected because security guards play an integral role in the security and safety of the citizens of New York State, and the integrity of the Security Guard Program demands that those involved in the training of security guards be held to high ethical standards.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: Regulated parties are expected to be able to comply as soon as this regulation is adopted.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this rulemaking because the proposed rule does not apply directly to small businesses and local governments and, therefore, will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed rule seeks to increase the standards and qualifications for certification as a security guard training instructor.

The Security Guard Act of 1992 requires the registration and training of security guards in New York State. The Division of Criminal Justice Services (Division) provides administrative oversight for mandated security guard training. It has been determined that the integrity of the Security Guard Program demands that those involved in the training of security guards be held to high ethical standards and that students be trained in accordance with applicable laws, rules and regulations, Division requirements, and policies and procedures. The proposed revisions, which are endorsed by the Security Guard Advisory Council, will increase the standards and qualifications for certification as a security guard training instructor.

The proposed rule requires that each applicant requesting security guard instructor certification shall:

(1) satisfy minimum qualification criteria relating to education, teaching experience, formal training, and security experience as determined by the Commissioner of the Division of Criminal Justice Services (Commissioner), including but not limited to the following:

- (i) possess a high school diploma or its equivalent;
- (ii) possess standards of good character, integrity, and trustworthiness; and

(iii) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier agency; or

(iv) maintain a valid security guard registration card issued by the Department of State; or

(v) maintain a valid armed security armored car guard registration card issued by the Department of State; or

(vi) be employed as police or peace officer in good standing.

Additionally, these regulations include more specific information required or requested by the Commissioner prior to certification of a security guard instructor. For instance, the Commissioner shall consider additional factors including, but not limited to: whether the applicant has had a security guard, special security guard or armed security guard instructor, or security guard training school application or renewal application denied for cause, or is the instructor at a school where the security guard school application or renewal application of such school has ever been denied for cause, and the date and nature of such denial; whether the applicant has had a security guard, special security guard or armed security guard instructor certification, or security guard training school approval suspended or revoked, or is the instructor at a school where the approval of such school has ever been or is suspended or revoked, and the date and

nature of such suspension or revocation; whether the applicant has ever been convicted of a crime, and the date and nature of the offense; and whether there are any criminal charges pending against the applicant.

Furthermore, these regulations require the certified instructor to adhere to and engage in proper business practices; and ensure that the security guard training course is compliant with applicable laws, rules and regulations, Division requirements, and policies and procedures.

Accordingly, based on the foregoing, it is evident that this rule imposes neither an adverse economic impact nor a recordkeeping requirement on small businesses and local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this rulemaking because the proposed rule will not impose any adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposed rule seeks to increase the standards and qualifications for certification as a security guard training instructor.

The Security Guard Act of 1992 requires the registration and training of security guards in New York State. The Division of Criminal Justice Services (Division) provides administrative oversight for mandated security guard training. It has been determined that the integrity of the Security Guard Program demands that those involved in the training of security guards be held to high ethical standards and that students be trained in accordance with applicable laws, rules and regulations, Division requirements, and policies and procedures. The proposed revisions, which are endorsed by the Security Guard Advisory Council, will increase the standards and qualifications for certification as a security guard training instructor.

The proposed rule requires that each applicant requesting security guard instructor certification shall:

(1) satisfy minimum qualification criteria relating to education, teaching experience, formal training, and security experience as determined by the Commissioner of the Division of Criminal Justice Services (Commissioner), including but not limited to the following:

- (i) possess a high school diploma or its equivalent;
- (ii) possess standards of good character, integrity, and trustworthiness; and
- (iii) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier agency; or
- (iv) maintain a valid security guard registration card issued by the Department of State; or
- (v) maintain a valid armed security armored car guard registration card issued by the Department of State; or
- (vi) be employed as police or peace officer in good standing.

Additionally, these regulations include more specific information required or requested by the Commissioner prior to certification of a security guard instructor. For instance, the Commissioner shall consider additional factors including, but not limited to: whether the applicant has had a security guard, special security guard or armed security guard instructor, or security guard training school application or renewal application denied for cause, or is the instructor at a school where the security guard school application or renewal application of such school has ever been denied for cause, and the date and nature of such denial; whether the applicant has had a security guard, special security guard or armed security guard instructor certification, or security guard training school approval suspended or revoked, or is the instructor at a school where the approval of such school has ever been or is suspended or revoked, and the date and nature of such suspension or revocation; whether the applicant has ever been convicted of a crime, and the date and nature of the offense; and whether there are any criminal charges pending against the applicant.

Furthermore, these regulations require the certified instructor to adhere to and engage in proper business practices; and ensure that the security guard training course is compliant with applicable laws, rules and regulations, Division requirements, and policies and procedures.

Accordingly, based on the foregoing, it is evident that this rule imposes neither an adverse economic impact nor a recordkeeping requirement on public and private entities in rural areas.

Job Impact Statement

1. Nature of impact: Among other things, the proposed rule requires that each applicant requesting security guard instructor certification shall:

- (1) satisfy minimum qualification criteria relating to education, teaching experience, formal training, and security experience as determined by the Commissioner of the Division of Criminal Justice Services (Commissioner), including but not limited to the following:
 - (i) possess a high school diploma or its equivalent;
 - (ii) possess standards of good character, integrity, and trustworthiness; and
 - (iii) be an officer, member, or principal currently licensed by the Depart-

ment of State as a private investigator; watch, guard or patrol agency; or armored car carrier agency; or

- (iv) maintain a valid security guard registration card issued by the Department of State; or
- (v) maintain a valid armed security armored car guard registration card issued by the Department of State; or
- (vi) be employed as police or peace officer in good standing.

For instance, pursuant to Article 7-A of the General Business Law (GBL), in order to qualify for a security guard registration card, GBL § 89-h(10) requires the payment of: (1) a fee of \$36 to the Department of State (DOS) for processing of the application, investigation of the applicant and for the initial biennial registration period; and (2) a fee of \$75 to the Division of Criminal Justice Services (Division) pursuant to section 837(8-a) of the Executive Law for the cost of the search of the Division's criminal history records and the return of a report thereon to DOS. Thus, if a security guard training instructor does not already possess a valid registration card, the rule will impose a cost of \$111 for compliance.

However, the process to become a registered guard is affordable and a registration card is easily attainable if there is no criminal background. Further, this requirement will ensure that security guard training instructors, who will have access to students' sensitive personally identifiable information, have gone through a background check.

2. Categories and numbers affected: The principal category of jobs affected would be instructors who teach the training material to students. It is difficult to estimate the number of jobs at issue, but it is considered to be relatively small.

3. Regions of adverse impact: The proposed rule applies equally throughout the State. However, because a majority of security guard training schools are located in the New York City/Long Island metropolitan area, that area has the greatest likelihood to experience an adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact: The rule provides that the Commissioner may waive some of the requirements for the existing or prospective security guard, special security guard or armed security guard instructor if the existing or prospective security guard, special security guard or armed security guard instructor is employed with or at a public or private educational institution operating under the purview of the New York State Education Department or an equivalent agency in another jurisdiction, a public entity, an entity employing security guards on a proprietary basis for its own use, or an educational institution conducted on a not-for-profit basis by firms or organizations, provided that such instruction is offered at no charge; or is an employed police or peace officer in good standing.

5. Self-employment opportunities: It is apparent from the nature and purpose of the proposal that it will have no substantial adverse impact on self-employment opportunities.

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

Approved Security Guard Training Schools

I.D. No. CJS-44-13-00002-P

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

Proposed Action: Repeal of Part 6028; and addition of new Part 6028 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13), 841-b(1) and 841-c(2)

Subject: Approved security guard training schools.

Purpose: Increase the minimum qualifications for approval and establish additional clear and specific requirements for such approval.

Substance of proposed rule (Full text is posted at the following State website: <http://www.criminaljustice.ny.gov>): Executive Law section 841-c(2) authorizes the Commissioner of the Division of Criminal Justice Services (commissioner) to issue certificates of approval to, and revoke the approval of, security guard training schools. Executive Law section 841-b(1)(a) authorizes the Security Guard Advisory Council (council) to recommend to the commissioner rules and regulations with respect to the approval or revocation of security guard training schools.

The general intent of the proposed amendments is to clarify and enhance existing regulations. The training requirements recommended by the council and adopted by the commissioner are promulgated in 9 NYCRR Parts 6027, 6028, and 6029, with respect to security guard training courses, the approved security guard training schools, and the security guard instructor standards and qualifications. These regulations specify the requirements necessary for the approval of a school.

Part 6028 of 9 NYCRR is repealed and a new Part 6028 is added to read as follows:

Approved Security Guard Training Schools

Section 6028.1 Definitions.

Some definitions were clarified. The following definitions were added: division, successful completion or successfully complete, school owner, public entity, and defects in business practices. The definition security guard company was deleted as it was not used in this Part.

6028.2 Statement of purpose.

No changes from existing regulations.

6028.3 Requirements for approval of a security guard training school.

This section shifts the responsibility of submitting a completed Security Guard Training School Application form from the existing or prospective school director to the existing or prospective school owner. Additionally, this section includes more specific information required or requested by the commissioner prior to approval of a security guard training school. For instance, the commissioner shall consider additional factors including, but not limited to: whether the existing or prospective school owner, school director or co-director(s) has had a security guard school application or renewal application denied for cause, or is the owner, school director or co-director of a school where the approval of such school has ever been or is suspended or revoked pursuant to this Part and the date and nature of such denial, suspension or revocation; whether the existing or prospective school owner, school director or co-director(s) utilizes a security guard instructor who has had a certification denied, suspended or revoked pursuant to Part 6029 of this Title; whether the existing or prospective school owner, school director or co-director(s) has ever been convicted of a crime, and the date and nature of the offense; and whether there are any criminal charges pending against the existing or prospective school owner, school director or co-director(s).

6028.3-A Exemptions.

Provides that some of the requirements for the existing or prospective school owner, school director or school co-director may be waived by the commissioner if the security guard training school, or existing or prospective school owner, director or co-director is:

- (a) A public or private educational institution operating under the purview of the New York State Education Department or an equivalent agency in another jurisdiction; or
- (b) A public entity; or
- (c) An entity employing security guards on a proprietary basis for its own use; or
- (d) An educational institution conducted on a not-for-profit basis by firms or organizations, provided that such instruction is offered at no charge; or
- (e) An employed police or peace officer in good standing.

6028.4 Suspension and revocation of approval of a security guard training school.

This section includes reasons which the commissioner can suspend the approval of a security guard training school and provides for an opportunity to cure. This section also includes additional reasons which the commissioner can revoke an approval: the commissioner determines that there are defects in business practices; the security guard training school owner, director, and/or co-director is convicted of a felony or misdemeanor and the conduct constituting the offense was performed in the name of or in behalf of the school, or, in the discretion of the commissioner, bears on the integrity of the division; the security guard training school application contained a material false statement or omission, the truth or inclusion of which would have resulted in denial of the application pursuant to this Part; a school, after receipt of a notice of suspension, continues to conduct security guard training courses or holds itself out to be an approved security guard training school; or any other cause for which the commissioner deems the revocation necessary. In addition, section 6028.5(c) of the existing regulations provides, "Within 30 days of the receipt of said notice, the security guard training school may forward a written request to the commissioner, for a hearing to be held by the council to determine whether the approval should be revoked." This was revised to read "Within fifteen (15) days." Furthermore, this section states that the hearing shall be held at the next meeting of the council, and clarifies that the hearing shall be conducted in accordance with the provisions of the state administrative procedure act and that following deliberation, and in accordance with the open meetings law, the council shall submit its recommendation to the commissioner. Following receipt of the council's recommendation, and within 90 days of the date of the hearing, the commissioner shall forward to the school owner the decision and the reasons given for such decision. The commissioner makes the final decision, notwithstanding the council's recommendation. The commissioner, and not the council, shall be responsible for setting any penalty. A revocation shall remain in effect for at least one year, depending upon factors enumerated in section 6028.3(e) of this Part and other factors, and upon a showing of corrective action. Moreover, during an on-site inspection of an approved security guard training school by the commissioner, the commissioner may suspend such school pending revocation if the violation or misconduct warrants such action.

6028.5 Term and renewal of security guard training school approval.

This section has been expanded to include reasons which the approval of a security guard training school may not be renewed and provides for an opportunity for a hearing. This section also clarifies that the security guard training school approval shall be valid only in the possession of the school to which it is issued and that a completed Security Guard Training School Renewal Application form must be submitted 120 days prior to the expiration date of the school approval.

6028.6 Requirements for the administration of an approved security guard training school.

The header of section 6028.7 Requirements for conducting a security guard training school under the existing regulations has been changed to Requirements for the administration of an approved security guard training school to better reflect its content. For instance, this section clarifies that a school shall not be allowed to operate as a security guard training school during such period of time when there is no appointed school director, unless the school owner is designated as acting school director. In addition, this section provides the following:

The security guard training school approval certification shall be displayed in a conspicuous place at all school facilities and training sites;

The school owner, director, and, if applicable, co-director, shall ensure that the approved security guard training school is compliant with applicable laws, rules and regulations, division requirements, and policies and procedures. This includes, but is not limited to the following: ensure that no school personnel behaves in a manner that is in contradiction to any applicable statute, rule, policy or decision issued by the commissioner; ensure that only instructors certified pursuant to the provisions of this Title are allowed to instruct a security guard training course or program at the school; and periodic review of each security guard training course or program to ensure that the course or program is conducted in accordance with applicable standards;

The council or the commissioner may conduct periodic unscheduled inspections of approved security guard training schools to monitor compliance with applicable laws, rules and regulations, division requirements, and policies and procedures. All such schools shall provide upon request of the council or the commissioner any and all records necessary to review compliance with the applicable laws, rules and regulations, division requirements, and policies and procedures;

As provided for in Part 6027, the taking and passing of a written examination is required of each individual prior to issuance of a certificate of successful completion for the pre-assignment training course, the on-the-job training course, the 47 hour firearms training course, and the eight hour annual in-service training course for holders of special armed guard registration cards. A certified security guard instructor shall provide the examination material, administer and supervise the examination, and grade the examination. The school owner, director, and, if applicable, co-director, shall retain lesson plans, class rosters, examination papers, student primary and secondary identification and all other appropriate records as determined by the commissioner in accordance with the appropriate schedule for records retention and disposition promulgated by the New York State Commissioner of the Department of Education. Such records shall be available for inspection by the council or the commissioner. Entities not otherwise covered by the Department of Education's schedule for records retention and disposition shall retain such records for a period of not less than two years;

The school owner, director, and if applicable, co-director, shall ensure that each individual student presents acceptable identification prior to attending any section of a security guard training course. Primary identification includes one of the following: (1) valid driver's license; (2) valid United States passport; (3) current government ID; or (4) current Military ID. Secondary identification includes a social security card plus one of the following: (1) employer ID; (2) student photo ID; or (3) other similar photo ID;

Attendance shall be required of each individual student for all sections of a security guard training course. No student shall be issued a certificate of completion who does not successfully complete a security guard training course;

The school owner, director, and, if applicable, co-director, shall ensure that the approved security guard training school and its employees, instructors, agents or other representatives adhere to and engage in proper business practices;

The school owner, director, and, if applicable, co-director shall promptly respond to any and all requests and inquiries made by the division, and promptly investigate any and all complaints by students and prospective students with respect to this Part.

6028.7 Refund policy of an approved security guard training school.

This section establishes a refund schedule for mandated training.

6028.8 Schedule of fees.

No significant changes from existing regulations.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, NYS Division of Criminal Justice Services, Alfred E. Smith Office Building, South Swan Street, Albany, NY 12210, (518) 485-0857, email: Natasha.Harvin@dcjs.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: Executive Law (EL) sections 837 (13), 841-b(1) and 841-c(2). EL § 841-b(1) authorizes the Security Guard Advisory Council (Council) to recommend to the Commissioner of the Division of Criminal Justice Services (Commissioner) rules and regulations with respect to, among other things, the approval, or revocation thereof, of security guard training schools. EL § 841-c(2) authorizes the Commissioner to approve and certify security guard training schools and revoke such approval or certificate. EL § 837(13) authorizes the Division of Criminal Justice Services (Division) to adopt, amend or rescind regulations “as may be necessary or convenient to the performance of the functions, powers and duties of the [D]ivision.”

2. Legislative objectives: The training requirements recommended by the Council, and adopted by the Commissioner, are promulgated in 9 NYCRR Parts 6027, 6028 and 6029, with respect to security guard training courses, the approved security guard training schools, and the security guard instructor standards and qualifications. The general intent of the proposed amendments is to clarify and enhance existing regulations. These regulations specify the requirements necessary for the approval of a school.

3. Needs and benefits: The Security Guard Act of 1992 requires the registration and training of security guards in New York State. The Division provides administrative oversight for mandated security guard training. It has been determined that the integrity of the Security Guard Program demands that those involved in the training of security guards be held to high ethical standards and that students be trained in accordance with applicable laws, rules and regulations, Division requirements, and policies and procedures. The proposed revisions, which are endorsed by the Council, will increase the minimum qualifications for approval as a security guard training school, and establish additional clear and specific requirements for such approval.

The proposed amendments shift the responsibility of submitting a completed Security Guard Training School Application form from the existing or prospective school director to the existing or prospective school owner. The proposed rule also requires that the existing or prospective school owner, school director or school co-director shall at a minimum:

- (1) possess standards of good character, integrity and trustworthiness; and
- (2) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier; or
- (3) maintain a valid security guard registration card issued by the Department of State; or
- (4) maintain a valid armored car guard registration card issued by the Department of State.

Additionally, these regulations include more specific information required or requested by the Commissioner prior to approval of a security guard training school. For instance, the Commissioner shall consider additional factors including, but not limited to: whether the existing or prospective school owner, school director or co-director(s) has had a security guard school application or renewal application denied for cause, or is the owner, school director or co-director of a school where the approval of such school has ever been or is suspended or revoked and the date and nature of such denial, suspension or revocation; whether the existing or prospective school owner, school director or co-director(s) utilizes a security guard instructor who has had a certification denied, suspended or revoked; whether the existing or prospective school owner, school director or co-director(s) has ever been convicted of a crime, and the date and nature of the offense; and whether there are any criminal charges pending against the existing or prospective school owner, school director or co-director(s).

Furthermore, these regulations require the school owner, director, and, if applicable, co-director, to ensure that the approved security guard training school is compliant with applicable laws, rules and regulations, Division requirements, and policies and procedures. This includes, but is not limited to the following: ensure that no school personnel behaves in a manner that is in contradiction to any applicable statute, rule, policy or decision issued by the Commissioner; ensure that only instructors certified are allowed to instruct a security guard training course or program at the school; and periodic review of each security guard training course or program to ensure that the course or program is conducted in accordance with applicable standards.

Moreover, under the proposed rule, the school owner, director, and if applicable, co-director, will have to ensure that each individual student presents acceptable identification prior to attending any section of a security guard training course; and retain such identification in accordance

with the appropriate schedule for records retention and disposition promulgated by the New York State Commissioner of the Department of Education.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: The current rule established a \$1,000 initial security guard school application fee and a \$500 security guard school renewal application fee. These fees will remain the same under the proposed amendments.

The proposed rule requires that the existing or prospective school owner, school director or school co-director shall at a minimum:

- (1) possess standards of good character, integrity and trustworthiness; and
- (2) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier; or
- (3) maintain a valid security guard registration card issued by the Department of State; or
- (4) maintain a valid armored car guard registration card issued by the Department of State.

For instance, pursuant to Article 7-A of the General Business Law (GBL), in order to qualify for a security guard registration card, GBL § 89-h(10) requires the payment of: (1) a fee of \$36 to the Department of State (DOS) for processing of the application, investigation of the applicant and for the initial biennial registration period; and (2) a fee of \$75 to the Division pursuant to section 837(8-a) of the Executive Law for the cost of the search of the Division’s criminal history records and the return of a report thereon to DOS. Thus, if a school owner, school director or school co-director does not already possess a valid registration card, the rule will impose a cost of \$111 for compliance.

However, the process to become a registered guard is affordable and a registration card is easily attainable if there is no criminal background. Further, this requirement will ensure that school owners, directors and co-directors, who will have access to students’ sensitive personally identifiable information, have gone through a background check.

The remaining requirements are oversight in nature; any associated costs are expected to be negligible.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Regulatory oversight will be accomplished using existing resources.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The fees associated with obtaining a security guard registration card are set forth in GBL § 89-h.

5. Local government mandates: The proposed rule is applicable to local governments that operate security guard training schools. However, the proposed rule would allow the Commissioner to waive some of the requirements for the existing or prospective school owner, school director or school co-director if the security guard training school, or existing or prospective school owner, director or co-director is a public or private educational institution operating under the purview of the New York State Education Department or an equivalent agency in another jurisdiction; an entity employing security guards on a proprietary basis for its own use; an educational institution conducted on a not-for-profit basis by firms or organizations, provided that such instruction is offered at no charge; an employed police or peace officer in good standing; or a public entity. A public entity is defined as: (1) the state of New York; (2) a county, city, town, village or any other political subdivision or civil department or division of the state; (3) any other public corporation, public authority, commission, agency, municipal or other public housing authority, or project organized pursuant to article two of the private housing finance law; or (4) any other governmental instrumentality or governmental unit in the state of New York.

6. Paperwork: Among other things, under the proposed rule, the school owner, director, and if applicable, co-director, will have to ensure that each individual student presents acceptable identification prior to attending any section of a security guard training course; and retain such identification in accordance with the appropriate schedule for records retention and disposition promulgated by the New York State Commissioner of the Department of Education. In addition, during an on-site inspection of an approved security guard training school by the Commissioner, the Commissioner may suspend an approved security guard training school pending revocation if the violation or misconduct warrants such action. To invoke the suspension, the Commissioner shall provide the approved security guard training school with a notice of intent to revoke the approval of such security guard training school and the reasons for such action on a form.

7. Duplication: This proposal does not duplicate any other existing State or federal requirements.

8. Alternatives: Maintaining the current school approval requirements

was considered, but rejected because security guards play an integral role in the security and safety of the citizens of New York State, and the integrity of the Security Guard Program demands that those involved in the training of security guards be held to high ethical standards.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: Regulated parties are expected to be able to comply as soon as this regulation is adopted.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule applies to security guard training schools. There are currently 447 approved security guard training schools. Local governments and small businesses may operate security guard training schools, although the exact number is not known.

2. Compliance requirements: The proposed rule increases the minimum qualifications for approval as a security guard training school and establishes additional clear and specific requirements for such approval.

The proposed amendments shift the responsibility of submitting a completed Security Guard Training School Application form from the existing or prospective school director to the existing or prospective school owner. The proposed rule also requires that the existing or prospective school owner, school director or school co-director shall at a minimum:

(1) possess standards of good character, integrity and trustworthiness; and

(2) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier; or

(3) maintain a valid security guard registration card issued by the Department of State; or

(4) maintain a valid armored car guard registration card issued by the Department of State.

Additionally, these regulations include more specific information required or requested by the Commissioner of the Division of Criminal Justice Services (Commissioner) prior to approval of a security guard training school. For instance, the Commissioner shall consider additional factors including, but not limited to: whether the existing or prospective school owner, school director or co-director(s) has had a security guard school application or renewal application denied for cause, or is the owner, school director or co-director of a school where the approval of such school has ever been or is suspended or revoked and the date and nature of such denial, suspension or revocation; whether the existing or prospective school owner, school director or co-director(s) utilizes a security guard instructor who has had a certification denied, suspended or revoked; whether the existing or prospective school owner, school director or co-director(s) has ever been convicted of a crime, and the date and nature of the offense; and whether there are any criminal charges pending against the existing or prospective school owner, school director or co-director(s).

Furthermore, these regulations require the school owner, director, and, if applicable, co-director, to ensure that the approved security guard training school is compliant with applicable laws, rules and regulations, Division requirements, and policies and procedures. This includes, but is not limited to the following: ensure that no school personnel behaves in a manner that is in contradiction to any applicable statute, rule, policy or decision issued by the Commissioner; ensure that only instructors certified are allowed to instruct a security guard training course or program at the school; and periodic review of each security guard training course or program to ensure that the course or program is conducted in accordance with applicable standards.

Moreover, under the proposed rule, the school owner, director, and if applicable, co-director, will have to ensure that each individual student presents acceptable identification prior to attending any section of a security guard training course; and retain such identification in accordance with the appropriate schedule for records retention and disposition promulgated by the New York State Commissioner of the Department of Education.

3. Professional services: No professional services not already being utilized by a security guard training school will be needed to comply with the proposed rule.

4. Compliance costs: The current rule established a \$1,000 initial security guard school application fee and a \$500 security guard school renewal application fee. These fees will remain the same under the proposed amendments.

The proposed rule requires that the existing or prospective school owner, school director or school co-director shall at a minimum:

(1) possess standards of good character, integrity and trustworthiness; and

(2) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier; or

(3) maintain a valid security guard registration card issued by the Department of State; or

(4) maintain a valid armored car guard registration card issued by the Department of State.

For instance, pursuant to Article 7-A of the General Business Law (GBL), in order to qualify for a security guard registration card, GBL § 89-h(10) requires the payment of: (1) a fee of \$36 to the Department of State (DOS) for processing of the application, investigation of the applicant and for the initial biennial registration period; and (2) a fee of \$75 to the Division pursuant to section 837(8-a) of the Executive Law for the cost of the search of the Division's criminal history records and the return of a report thereon to DOS. Thus, if a school owner, school director or school co-director does not already possess a valid registration card, the rule will impose a cost of \$111 for compliance.

However, the process to become a registered guard is affordable and a registration card is easily attainable if there is no criminal background. Further, this requirement will ensure that school owners, directors and co-directors, who will have access to students' sensitive personally identifiable information, have gone through a background check.

The remaining requirements are oversight in nature; any associated costs are expected to be negligible.

5. Economic and technological feasibility: No economic or technological impediments to compliance have been identified.

6. Minimizing adverse impact: The rule provides that the Commissioner may waive some of the requirements for the existing or prospective school owner, school director or school co-director if the security guard training school, or existing or prospective school owner, director or co-director is a public or private educational institution operating under the purview of the New York State Education Department or an equivalent agency in another jurisdiction; an entity employing security guards on a proprietary basis for its own use; an educational institution conducted on a not-for-profit basis by firms or organizations, provided that such instruction is offered at no charge; an employed police or peace officer in good standing; or a public entity. A public entity is defined as: (1) the state of New York; (2) a county, city, town, village or any other political subdivision or civil department or division of the state; (3) any other public corporation, public authority, commission, agency, municipal or other public housing authority, or project organized pursuant to article two of the private housing finance law; or (4) any other governmental instrumentality or governmental unit in the state of New York.

7. Small business and local government participation: The proposal was the subject of discussion by the Security Guard Advisory Council (Council) at its November 16, 2011 and May 14, 2013 meetings. The Council consists of members who are knowledgeable about the security guard industry, and many of whom represent small businesses or governmental entities. The Council endorsed the proposal.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The proposed rule applies to security guard training schools throughout New York State, an undetermined number of which may be located in a rural area. However, based on the Division's records, of the 447 approved security guard training schools in New York State, approximately 155 (34%) are located in New York City and 131 (29%) are located in the five most populous counties (Erie, Monroe, Nassau, Westchester, and Suffolk).

Total Number of Approved Security Guard Training Schools	447
Number of Security Guard Training Schools located in:	
NYC	155
Erie, Monroe, Nassau, Westchester and Suffolk Counties	131
NYC and Erie, Monroe, Nassau, Westchester and Suffolk Counties	286

2. Reporting, recordkeeping and other compliance requirements and professional services: The proposed rule increases the minimum qualifications for approval as a security guard training school and establishes additional clear and specific requirements for such approval. No professional services not already being utilized by a security guard training school will be needed to comply with the proposed rule.

3. Costs: The proposed rule requires that the existing or prospective school owner, school director or school co-director shall at a minimum:

(1) possess standards of good character, integrity and trustworthiness; and

(2) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier; or

(3) maintain a valid security guard registration card issued by the Department of State; or

(4) maintain a valid armored car guard registration card issued by the Department of State.

For instance, pursuant to Article 7-A of the General Business Law

(GBL), in order to qualify for a security guard registration card, GBL § 89-h(10) requires the payment of: (1) a fee of \$36 to the Department of State (DOS) for processing of the application, investigation of the applicant and for the initial biennial registration period; and (2) a fee of \$75 to the Division pursuant to section 837(8-a) of the Executive Law for the cost of the search of the Division’s criminal history records and the return of a report thereon to DOS. Thus, if a school owner, school director or school co-director does not already possess a valid registration card, the rule will impose a cost of \$111 for compliance.

However, the process to become a registered guard is affordable and a registration card is easily attainable if there is no criminal background. Further, this requirement will ensure that school owners, directors and co-directors, who will have access to students’ sensitive personally identifiable information, have gone through a background check.

4. Minimizing adverse impact: The rule provides that the Commissioner of the Division of Criminal Justice Services may waive some of the requirements for the existing or prospective school owner, school director or school co-director if the security guard training school, or existing or prospective school owner, director or co-director is a public or private educational institution operating under the purview of the New York State Education Department or an equivalent agency in another jurisdiction; an entity employing security guards on a proprietary basis for its own use; an educational institution conducted on a not-for-profit basis by firms or organizations, provided that such instruction is offered at no charge; an employed police or peace officer in good standing; or a public entity. A public entity is defined as: (1) the state of New York; (2) a county, city, town, village or any other political subdivision or civil department or division of the state; (3) any other public corporation, public authority, commission, agency, municipal or other public housing authority, or project organized pursuant to article two of the private housing finance law; or (4) any other governmental instrumentality or governmental unit in the state of New York.

5. Rural area participation: The proposal was the subject of discussion by the Security Guard Advisory Council (Council) at its November 16, 2011 and May 14, 2013 meetings. The Council consists of members who are knowledgeable about the security guard industry, and many of whom represent small businesses or governmental entities. The Council endorsed the proposal.

Job Impact Statement

Nature of impact: The proposed rule requires that the existing or prospective school owner, school director or school co-director shall at a minimum:

- (1) possess standards of good character, integrity and trustworthiness; and
- (2) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier; or
- (3) maintain a valid security guard registration card issued by the Department of State; or
- (4) maintain a valid armored car guard registration card issued by the Department of State.

For instance, pursuant to Article 7-A of the General Business Law (GBL), in order to qualify for a security guard registration card, GBL § 89-h(10) requires the payment of: (1) a fee of \$36 to the Department of State (DOS) for processing of the application, investigation of the applicant and for the initial biennial registration period; and (2) a fee of \$75 to the Division pursuant to section 837(8-a) of the Executive Law for the cost of the search of the Division’s criminal history records and the return of a report thereon to DOS. Thus, if a school owner, school director or school co-director does not already possess a valid registration card, the rule will impose a cost of \$111 for compliance.

However, the process to become a registered guard is affordable and a registration card is easily attainable if there is no criminal background. Further, this requirement will ensure that school owners, directors and co-directors, who will have access to students’ sensitive personally identifiable information, have gone through a background check.

It is possible that some security guard training schools will cease operation rather than comply with the above or any other new requirements. Likewise, some schools may not commence operation because of the requirements. In such cases, employment opportunities at those schools that cease operation or never begin operations would be impacted.

2. Categories and numbers affected: The categories of jobs affected would be the owner, school director or school co-director of a security guard training school who are responsible for the administration of the school; or a security guard instructor who teaches the training material to students. It is difficult to estimate the number of jobs at issue, but it is considered to be relatively small.

3. Regions of adverse impact: The proposed rule applies equally throughout the State. However, because a majority of security guard training schools are located in the New York City/Long Island metropolitan

area, that area has the greatest likelihood to experience an adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact: The rule provides that the Commissioner of the Division of Criminal Justice Services may waive some of the requirements for the existing or prospective school owner, school director or school co-director if the security guard training school, or existing or prospective school owner, director or co-director is a public or private educational institution operating under the purview of the New York State Education Department or an equivalent agency in another jurisdiction; an entity employing security guards on a proprietary basis for its own use; an educational institution conducted on a not-for-profit basis by firms or organizations, provided that such instruction is offered at no charge; an employed police or peace officer in good standing; or a public entity. A public entity is defined as: (1) the state of New York; (2) a county, city, town, village or any other political subdivision or civil department or division of the state; (3) any other public corporation, public authority, commission, agency, municipal or other public housing authority, or project organized pursuant to article two of the private housing finance law; or (4) any other governmental instrumentality or governmental unit in the state of New York.

5. Self-employment opportunities: Among other things, the proposed rule requires that the existing or prospective school owner, school director or school co-director shall at a minimum:

- (1) possess standards of good character, integrity and trustworthiness; and
- (2) be an officer, member, or principal currently licensed by the Department of State as a private investigator; watch, guard or patrol agency; or armored car carrier; or
- (3) maintain a valid security guard registration card issued by the Department of State; or
- (4) maintain a valid armored car guard registration card issued by the Department of State.

For instance, pursuant to Article 7-A of the General Business Law (GBL), in order to qualify for a security guard registration card, GBL § 89-h(10) requires the payment of: (1) a fee of \$36 to the Department of State (DOS) for processing of the application, investigation of the applicant and for the initial biennial registration period; and (2) a fee of \$75 to the Division pursuant to section 837(8-a) of the Executive Law for the cost of the search of the Division’s criminal history records and the return of a report thereon to DOS. Thus, if a school owner, school director or school co-director does not already possess a valid registration card, the rule will impose a cost of \$111 for compliance.

However, the process to become a registered guard is affordable and a registration card is easily attainable if there is no criminal background. Further, this requirement will ensure that school owners, directors and co-directors, who will have access to students’ sensitive personally identifiable information, have gone through a background check.

It is believed that many security guard training schools are operated by sole proprietors. It is possible, but considered unlikely, that the new regulations may discourage such sole proprietors from continuing or starting a security guard training school.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-44-13-00004-E

Filing No. 989

Filing Date: 2013-10-11

Effective Date: 2013-10-11

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; and 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 redesignation 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 January 8, 2014.

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 of 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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Unclaimed Life Insurance Benefits and Policy Identification

I.D. No. DFS-44-13-00008-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 226 (Regulation 200) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521 and 4525 and art. 24

Subject: Unclaimed Life Insurance Benefits and Policy Identification.

Purpose: To ensure payment of unclaimed benefits to policyowners and policy beneficiaries.

Text of proposed rule: PART 226

UNCLAIMED LIFE INSURANCE BENEFITS AND POLICY IDENTIFICATION

Section 226.0 Purpose

(a) Beginning in 2011, the Department conducted an investigation into how life insurance companies and fraternal benefit societies track life insurance policyholders. The Department's investigation found that many insurers had been regularly using lists of recent deaths from the social security administration to promptly cease making annuity payments. However, most insurers had not been using the lists to determine whether death benefits were payable to beneficiaries.

(b) The public needs to know that insurers are taking reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the life insurance benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the existing policy values until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

(c) To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part was promulgated on an emergency basis. Subsequently, the Legislature enacted Insurance Law section 3212-a, which was renumbered as section 3240, to address the issues that the Department had observed.

(d) This Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests.

Section 226.1 Definitions

(a) Account means:

(1) any mechanism, whether denoted as a retained asset account or otherwise, whereby the settlement of proceeds payable to a beneficiary under a policy is accomplished by the insurer or an entity acting on behalf of the insurer placing the proceeds into an account where the insurer retains those proceeds and the beneficiary has check or draft writing privileges; or

(2) any other settlement option relating to the manner of distribution of the proceeds payable under a policy.

(b) Death index means the death master file maintained by the United States social security administration or any other database or service that is at least as comprehensive as the death master file maintained by the United States social security administration and that is acceptable to the superintendent.

(c) Insured means an individual covered by a policy or an annuitant when the annuity contract provides for benefits to be paid or other monies to be distributed upon the death of the annuitant.

(d) Insurer means a life insurance company or fraternal benefit society.

(e) Lost policy finder means a service made available by the Department of Financial Services on its website or otherwise developed by the superintendent either on his or her own or in conjunction with other state regulators, to assist consumers with locating unclaimed life insurance benefits.

(f) Policy means a life insurance policy, an annuity contract, a certificate under a life insurance policy or annuity contract, or a certificate issued by a fraternal benefit society, under which benefits are to be paid upon the death of the insured, including a policy that has lapsed or been terminated.

Section 226.2 Applicability

(a) This Part shall apply to a policy that is:

(1) issued by a domestic insurer and any account established under or as a result of such policy; or

(2) delivered or issued for delivery in this state by an authorized foreign insurer and any account established under or as a result of such policy.

(b) Notwithstanding subdivision (a) of this section, with respect to a policy delivered or issued for delivery outside this state, a domestic insurer may, in lieu of the requirements of this Part, implement procedures that meet the minimum requirements of the state in which the insurer delivered or issued the policy, provided that the superintendent determines that such other requirements are no less favorable to the policyowner and beneficiary than those required by this Part.

Section 226.3 Multiple policy search procedures

(a) Upon receiving notification of the death of an insured or account holder or in the event of a match made by a death index cross-check pursuant to section 226.4 of this Part, an insurer shall search every policy or account subject to this Part to determine whether the insurer has any other policies or accounts for the insured or account holder.

(b) An insurer that receives a notification of death of an insured or account holder, or identifies a death index match, shall notify each United States affiliate, parent, or subsidiary, and any entity with which the insurer contracts that may maintain or control records relating to policies or accounts covered by this Part of the notification or verified death index match. An insurer shall take all steps necessary to have each affiliate, parent, subsidiary, or other entity perform the search required by subdivision (a) of this section.

Section 226.4 Standards for investigating claims and locating claimants under policies and accounts

(a)(1) Except as set forth in paragraph (2) of this subdivision, at no later than policy delivery or the establishment of an account and upon any change of insured, owner, account holder, or beneficiary, an insurer shall request information sufficient to ensure that all benefits or other monies are distributed to the appropriate persons upon the death of the insured or account holder, including, at a minimum, the name, address, date of birth, social security number, and telephone number of every owner, account holder, insured and beneficiary of such policy or account, as applicable.

(2) Where an insurer issues a policy or provides for an account based on information received directly from an insured's employer, the insurer may obtain the beneficiary information described in paragraph (1) of this subdivision by communicating with the insured after the insurer's receipt of the information from the insured's employer.

(b)(1) An insurer shall use the latest available updated version of the death index to cross-check every policy and account subject to this Part, except as specified in subdivision (h) of this section. The cross-checks shall be performed no less frequently than quarterly. An insurer may submit a request to the superintendent for the insurer to perform the cross-checks less frequently than quarterly, but in no event shall the cross-checks be performed less frequently than semi-annually. The superintendent may grant such a request upon the insurer's demonstration of hardship.

(2) The cross-checks shall be performed using:
 (i) the insured or account holder's social security number; or
 (ii) where the insurer does not know the insured or account holder's social security number, the name and date of birth of the insured or account holder.

(3) An insurer may comply with the requirements of this subdivision by using the full death index once annually and using the death index update files for the remaining cross-checks in that year.

(c) If an insurer uses a resource instead of or in addition to a death index in order to terminate benefits or close an account, the insurer shall also use that resource when cross-checking policies or accounts pursuant to subdivision (b) of this section.

(d) If an insurer uses a resource more frequently than quarterly in order to terminate benefits or close an account, the insurer shall use that resource with the same frequency when cross-checking policies or accounts pursuant to subdivision (b) of this section.

(e) Every insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, including:

(1) nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

(2) compound last names, and blank spaces or apostrophes in last name;

(3) incomplete date of birth data, and transposition of the "month" and "date" portions of the date of birth;

(4) incomplete social security number; and

(5) common data entry errors in name, date of birth and social security data.

(f) If an insurer only has a partial name, social security number, date of birth, or a combination thereof, of the insured or account holder under a policy or account, then the insurer shall use the available information to perform the cross-check pursuant to subdivision (b) of this section, which may be accomplished by using the procedures outlined in subdivision (e) of this section.

(g) Every insurer shall establish reasonable procedures to locate beneficiaries and shall make prompt payments or distributions in accordance with Part 216 of this Title (Insurance Regulation 64).

(h) This section shall not apply to any policy or any account:

(1) where the insurer has fully satisfied all obligations under the policy or account prior to the date that the cross-check is performed;

(2) where the insurer has paid full death benefits on all insureds under the policy, or where the remaining obligations have been transferred to one or more new policies or accounts providing benefits of any kind in the event of the death of the insured or account holder;

(3) where the insurer has paid full surrender benefits on the policy, including a policy that is replaced after full surrender;

(4) where the policy has been rescinded and the insurer has returned all paid premiums;

(5) where the policy has been returned under a free-look provision and the insurer has returned all paid premiums;

(6) where the insurer has paid full maturity benefits under the policy;

(7) where the insurer does not maintain or control the records containing the information necessary to comply with the requirements of this section under a group policy administered by the group policyholder;

(8) where all monies due under the policy or account have escheated in accordance with state unclaimed property statutes;

(9) where the insurer has novated the policy;

(10) where the policy is a group annuity contract that funds employer-sponsored retirement plans and the insurer is not obligated by the terms of the contract to pay death benefits directly to the plan participant's beneficiary;

(11) where the insurer receives payroll deduction contributions for either a group or individual policy and a payment has been made in the 90 days prior to a cross-check;

(12) except as to retired employees, where premiums are wholly paid by an employer on an individual or group policy; or

(13) where a policy has lapsed or terminated with no benefits payable that was cross-checked with a death index within the 18 months preceding the effective date of this Part or that was cross-checked with a death index more than 18 months prior to the most recent cross-check conducted by the insurer.

Section 226.5 Lost policy finder application procedures

(a) An insurer shall:

(1) upon receiving a request forwarded by the superintendent through a lost policy finder, search for policies, excluding group policies administered by group policyholders where the insurer does not maintain or control the records containing the information necessary to comply with the requirements of section 226.4 of this Part, and any accounts subject to this Part that insure the life of, or are owned by, an individual named as the decedent in the request forwarded by the superintendent;

(2) report to the superintendent through a lost policy finder:

(i) within 30 days of receiving the request, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, the findings of the search; and

(ii) where the search reveals that benefits may be due, within 30 days of the final disposition of the request, the benefit paid and any other information requested by the superintendent; and

(3) within 30 days of receiving the request, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, for each identified policy and account insuring the life of, or owned by, the named decedent, provide to:

(i) a requestor who is also the beneficiary of record on the identified policy or account all items, statements and forms that the insurer reasonably believes to be necessary in order to file a claim; or

(ii) a requestor who is not the beneficiary of record on the identified policy or account the requested information to the extent permissible to be disclosed in accordance with Part 420 (Insurance Regulation 169) of this Title and any other applicable privacy law, and to take such other steps necessary to facilitate the payment of any benefit that may be due under the identified policy or account.

(b)(1) An insurer shall establish procedures to electronically receive the lost policy finder request from, and make reports to, the superintendent as provided for in subdivision (a) of this section. When transmitted electronically, the date that the superintendent forwards the request shall be deemed to be the date of receipt by the insurer; provided however that if the date is a Saturday, Sunday or a public holiday, as defined in General Construction Law section 24, then the date of receipt shall be as provided in General Construction Law section 25-a.

(2) An insurer required to electronically receive and submit pursuant to this Part may apply to the superintendent for an exemption from the requirement that the submission be electronic by submitting a written request to the superintendent for approval.

(3) The insurer's request for an exemption shall specify whether it is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.

(4) The insurer requesting an exemption shall submit, upon the superintendent's request, any additional information necessary for the superintendent to evaluate the insurer's request for an exemption.

(5) The insurer shall be exempt from the electronic submission requirement upon the superintendent's written determination so exempting the insurer. The superintendent's determination will specify the basis upon which the superintendent is granting the request and for how long the exemption applies.

(6) If the superintendent approves an insurer's request for an exemption from the electronic submission requirement, then the insurer shall make a physical submission in a form and manner acceptable to the superintendent.

Section 226.6 Report to the comptroller

An insurer subject to this Part shall include in the report required under Abandoned Property Law section 703 any information on unclaimed benefits due pursuant to this Part and the number of policies and accounts that the insurer has identified pursuant to section 226.4 of this Part for the prior calendar year under which any outstanding monies have not been paid or distributed by December thirty-first of such year, except potential matches still being investigated pursuant to section 226.4 of this Part. A copy of the report also shall be filed with the superintendent.

Text of proposed rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Data, views or arguments may be submitted to: Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@dfs.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521, and 4525 and Article 24 of the Insurance Law.

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

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

Insurance Law section 316 authorizes the Superintendent to promulgate

regulations to require an insurer or other person or entity that makes a filing or submission with the Superintendent, pursuant to the Insurance Law, to do so by electronic means.

Insurance Law section 1102 authorizes the Superintendent to refuse to issue or renew an insurer's license if such refusal will best promote the interests of the people of this state.

Insurance Law section 1104 authorizes the Superintendent to revoke the license of a foreign insurer if such revocation is reasonably necessary to protect the interests of the people of this state.

Insurance Law Article 24 regulates trade practices in the insurance industry by prohibiting practices that constitute unfair methods of competition or unfair or deceptive acts or practices.

Insurance Law section 2601 prohibits insurers from engaging in unfair claim settlement practices, including the failure to adopt and implement reasonable standards for prompt investigation of claims.

Insurance Law section 3240 (Unclaimed benefits) requires insurers to compare life insurance policies against the federal death master file to identify potential matches of their insureds or account holders and to undertake a good faith effort to confirm the death of the insureds and locate beneficiaries. Section 3240(j) authorizes the superintendent to promulgate rules and regulations to implement the statute.

Insurance Law section 4521 authorizes the Superintendent to revoke or suspend a fraternal benefit society's license if such society is not carrying out its contracts in good faith.

Insurance Law section 4525 applies Articles 3 and 24 of the Insurance Law to authorized fraternal benefit societies.

2. Legislative objectives: Beginning in 2011, the Department investigated allegations of unfair claims and trade practices by authorized life insurers and fraternal benefit societies (collectively herein, "insurers") in connection with claims and the location of beneficiaries. The Department was concerned that many insurers had not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits due under policies and accounts. In particular, there were instances in which a death had occurred and no claim had been filed, but premiums continued to be deducted from the account value or cash value until the policy lapsed. In other instances, the policies or accounts may simply have remained dormant after death. In these instances, a valid death benefit was either not paid or distributed or was delayed.

The Department met with several insurers that have substantial writings in New York to discuss past and current claim and death benefit payment practices. Some insurers had used the U.S. Social Security Administration's Death Master File ("SSA Master File") to confirm the death of contract holders so that they could cease making annuity payments, but had not used the SSA Master File to determine whether any death benefit payments were due under insurance policies or other accounts.

The Department sent a letter, dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required each insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over \$812 million has been paid nationwide to beneficiaries, including more than \$241 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison to the SSA Master File. This rule was promulgated on an emergency basis to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30

days of the Department's notification of a request to identify coverage that the Department receives through its new Lost Policy Finder application, or within 45 days of receiving the request where an insurer contracts with another entity to maintain the insurer's records. The rule also requires an insurer to notify the beneficiary, within 30 days of the Department's notification, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

After the initial issuance of the regulation, the Legislature in 2012 enacted Insurance Law section 3213-a, which required insurers to perform a comparison of life insurance policies against the federal death master file to identify potential matches of their insureds or account holders and to undertake a good faith effort to confirm the death of insureds and locate beneficiaries. It also authorized the Superintendent to promulgate rules and regulations to implement the statute. Although the governor signed the bill into law, he expressed a number of concerns with the legislation. A chapter amendment amended the bill, addressing those concerns. The chapter amendment also renumbered the section as section 3240. Since the original bill had a delayed effective date, it never took effect in its original form. The regulation has been amended to conform to the requirements of new section 3240 (Unclaimed benefits).

3. Needs and benefits: Many insurers had not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits under policies and accounts. The Department conducted an investigation into how insurers track life insurance policy holders. The Department found that many insurers had regularly been using lists of recent deaths from the Social Security Administration to promptly cease making annuity payments. However, most insurers had not been using the lists to determine whether death benefits were payable to beneficiaries.

This practice led to many abuses. For example, in some instances, a death may have occurred with no claim being filed, but premiums would continue to be deducted from the account value or cash value until the policy lapsed. In other cases, the policies or accounts may simply have remained dormant after death. In these instances, a valid death benefit was either not paid or distributed or was delayed.

While insurers were extremely diligent about terminating benefits, they were much less so in seeing that benefits were paid to beneficiaries and that monies held by them in accounts were properly distributed. Insurers must take reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled.

To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, this Part requires insurers to respond to requests from the Superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests. It also establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

4. Costs: All insurers affected by this rule have already implemented procedures required by this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, May 6, 2013, and August 2, 2013. Additionally, in response to the 308 Letter sent by the Department to insurers in July 2011, several insurers had confirmed then that they had already established, or were in the process of establishing, the standards and procedures required by this rule. Thus, insurers should incur only minimal, if any, additional costs to comply with the requirements of this rule.

As a result of the 308 Letter, to date, more than \$812 million has been paid to beneficiaries nationwide, including more than \$241 million paid to New York beneficiaries. Additionally, more than \$338 million has been escheated or identified for escheatment. The amounts paid to beneficiaries and escheated (or identified for escheatment) now totals more than \$1.1 billion.

The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the minimal costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance of this rule. There are no costs to any other state government agency or local government.

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

6. Paperwork: Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's

request to search for policies and accounts, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: There are no viable alternatives to this rule. As a result of the 308 Letter, to date, more than \$812 million has been paid to beneficiaries nationwide, including more than \$241 million paid to New York beneficiaries. Additionally, more than \$338 million has been escheated or identified for escheatment. The amount paid to beneficiaries and escheated (or identified for escheatment) now totals more than \$1.1 billion - unquestionably an ongoing benefit to the public. While some insurers may have voluntarily implemented these procedures, promulgation of this rule was necessary to require all insurers to do so. This rule addresses unfair claims and trade practices by insurers in a manner that protects the public while providing minimal burdens on insurers.

After considering comments received from insurers after the 308 Letter was issued, the Department issued guidance to supplement the 308 Letter. This rule incorporates those comments.

After the regulation was first promulgated on an emergency basis, the Legislature enacted section 3213-a, now 3240 (Unclaimed benefits). The regulation is revised to the extent necessary to conform to the statute.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: All insurers affected by this rule have already complied with the requirements of this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, May 6, 2013, and August 2, 2013. Therefore, this rule will take effect upon publication in the State Register.

Regulatory Flexibility Analysis

1. Small Businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact or any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at life insurers and fraternal benefit societies (collectively, "insurers") that are authorized to do business in New York State, none of which are a "small business" as defined in section 102(8) of the State Administrative Procedure Act. The Department has reviewed filed reports on examination and annual statements of these authorized insurers and believes that none of them fall within the definition of "small business," because there are none which are both independently owned and operated and have less than one hundred employees.

2. Local Governments: This rule does not impose any adverse economic impact on local governments, including reporting, recordkeeping, or other compliance requirements.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers covered by this rule do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule requires authorized life insurers and fraternal benefit societies (collectively, "insurers") to establish standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of the death of an insured or account holder. It also requires insurers to establish procedures to search for policies and accounts upon receipt of a death notice or the Superintendent's notification of a request to identify coverage, which was received through the Lost Policy Finder application. It requires insurers to perform, no less than quarterly, a cross-check of the death index (i.e., the U.S. Social Security Administration's Death Master File ("SSA Master File") or any other database or service that is acceptable to the Superintendent). In addition, it requires insurers to establish procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other informa-

tion requested by the Superintendent. Additionally, section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

3. Costs: All insurers affected by this rule have already implemented procedures required by this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, May 6, 2013, and August 2, 2013. Additionally, in response to the 308 Letter sent by the Department to insurers in July 2011, several insurers had confirmed then that they had already established, or were in the process of establishing, the standards and procedures required by this rule. Thus, insurers should incur only minimal, if any, additional costs to comply with the requirements of this rule.

As a result of the 308 Letter, to date, more than \$812 million has been paid to beneficiaries nationwide, including more than \$241 million paid to New York beneficiaries. Additionally, more than \$338 million has been escheated or identified for escheatment. The amounts paid to beneficiaries and escheated (or identified for escheatment) now totals more than \$1.1 billion.

The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the minimal costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance with this rule. There are no costs to any other state government agency or local government.

4. Minimizing adverse impact: The public needs to know that insurers are taking reasonable steps to ensure that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

The Department sent a letter, dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required the insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over \$812 million has been paid nationwide to beneficiaries, including more than \$241 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison of the SSA Master File. This rule was promulgated on an emergency basis to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage that the Department received through its new Lost Policy Finder application, or within 45 days of receiving the request where an insurer contracts with another entity to maintain the insurer's records. The rule also requires the insurer to notify the beneficiary, within 30 days of the Department's notification, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, of all items

necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

The rule thus ensures that insurers will continue to make death index cross-check efforts so that policyowners and policy beneficiaries will be provided with all of the benefits for which they have paid and to which they are entitled. This rule will result in the rightful payment of millions of dollars of additional benefits to beneficiaries. Therefore, it is necessary for all insurers to comply with the requirements of this rule.

5. Rural area participation: The Department received comments from insurers, including those doing business in rural areas of the State, regarding the 308 Letter. Those comments have been incorporated into this rule.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. This rule requires insurers to establish standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of an individual's death. It also requires insurers to set up procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

The Department believes that this rule will not have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Adopting Emergency Rule as a Permanent Rule

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

Filing Date: 2013-10-11

Effective Date: 2013-10-11

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

Action taken: On 10/10/13, the PSC adopted an order approving an emergency rule as a permanent rule authorizing Niagara Mohawk Power Corporation d/b/a National Grid to grant a temporary waiver and suspension of late payment charges due to flooding in the Mohawk Valley.

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)

Subject: Adopting emergency rule as a permanent rule.

Purpose: To adopt emergency rule as a permanent rule.

Substance of final rule: The Commission, on October 10, 2013, adopted an emergency rule as a permanent rule authorizing Niagara Mohawk Power Corporation d/b/a National Grid to grant a temporary waiver and suspension of late payment charges due to payment barriers caused by flooding in the Mohawk Valley Region, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-M-0307EA1)

NOTICE OF ADOPTION

Adopting Emergency Rule as a Permanent Rule

I.D. No. PSC-32-13-00003-A

Filing Date: 2013-10-15

Effective Date: 2013-10-15

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

Action taken: On 10/15/13, the PSC adopted an order approving an emergency rule as a permanent rule allowing Niagara Mohawk Power Corporation d/b/a National Grid to implement an economic development program to provide customers immediate assistance due to flooding.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Adopting emergency rule as a permanent rule.

Purpose: To adopt emergency rule as a permanent rule.

Text or summary was published in the August 7, 2013 issue of the Register, I.D. No. PSC-32-13-00003-P.

Substance of final rule: The Commission, on October 15, 2013, adopted an emergency rule as a permanent rule approving Niagara Mohawk Power Corporation d/b/a National Grid's request of an economic development program to provide quick and immediate assistance to customers due to severe flooding, subject to the terms and conditions set forth in the order.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-E-0201EA3)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

To Provide the Commission a Forum in Which to Consider the Disposition of the Tax Refund

I.D. No. PSC-44-13-00006-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 a proposal by Consolidated Edison Company of New York, Inc. to allocate, between customers and shareholders, a \$140,000,000.00 property tax refund from the City of New York.

Statutory authority: Public Service Law, section 113(2)

Subject: To provide the Commission a forum in which to consider the disposition of the tax refund.

Purpose: To consider whether the tax refund should be allocated, in whole or part, to customers.

Public hearing(s) will be held at: 1:00 p.m. (Evidentiary Hearing)*, Dec. 16, 2013 at Public Service Commission, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*There could be requests to reschedule the hearings. Notification of the start of the hearing or any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 13-M-0376.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or part, the petition of Consolidated Edison Company of New York, Inc., pursuant to Public Service Law Section 113(2), for approval of a proposed allocation between shareholders and customers of \$140,000,000.00 in property tax refunds resulting from a settlement of Con Edison's challenges to the City of New York's tax assessments related to the company's Astoria, Ravenswood, and Hudson Avenue generating stations. Con Edison proposes to calculate net refunds by deducting approximately (a) \$342,974.00 as the amount payable to the purchaser of the Ravenswood station and (b) \$249,478.13 in expenses incurred to achieve the refunds, and retain for shareholders approximately \$19,517,056.70 representing 14% of such net refunds.

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: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, 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-M-0376SP1)