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 RULE MAKING

Captive Cervids

I.D. No. AAM-44-13-00007-E
Filing No. 25
Filing Date: 2014-01-13
Effective Date: 2014-01-13

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

Action taken: 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 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.

Text of emergency 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]*D*epartment prior to such movement. An application for a movement permit may be obtained by calling the [d]*D*epartment during normal business hours. The [d]*D*epartment 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]*D*epartment is prohibited.

Subdivisions (b) and (c) of section 68.3 of 1 NYCRR are repealed and a new subdivision (b) is added to read as follows:

(b) All movements of CWD susceptible cervids into New York State are prohibited until August 1, 2018, 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 commissioner or his/her designee in consultation with the New York Department of Environmental Conservation. Prior to August 1, 2018, the commissioner shall 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.

Subdivisions (d), (e), (f) and (g) of section 68.3 of 1 NYCRR are relettered subdivisions (c), (d), (e) and (f).

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

[(e)] *(d)* 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].

Subparagrahs (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 only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. AAM-44-13-00007-EP, Issue of October 30, 2013. The emergency rule will expire March 13, 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

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:

This 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 reevalu-

ate 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.

This 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 StatesDepartment 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:

Four alternatives were considered for this emergency rule.

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 and the one ultimately chosen is to continue the ban on imports 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 fourth 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:

This 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.

This 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). DEC supports the rule.

Additionally, a hearing on the proposed adoption of the rule on a permanent basis was held on December 19, 2013. 13 people testified at the hearing and 36 comments were submitted during the comment period. Opinion on the regulation is divided. The Department is in the process of reviewing the comments.

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 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). DEC supports the rule.

Additionally, a hearing on the proposed adoption of the rule on a permanent basis was held on December 19, 2013. 13 people testified at the hearing and 36 comments were submitted during the comment period. Opinion on the regulation is divided. The Department is in the process of reviewing the comments.

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.

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Appeals, Hearings and Rulings

I.D. No. ASA-45-13-00002-A
Filing No. 40
Filing Date: 2014-01-14
Effective Date: 2014-01-29

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

Action taken: Repeal of Part 368; and amendment of Part 831 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.07(a) and 32.02

Subject: Appeals, Hearings and Rulings.

Purpose: Consolidates into Part 800s regulations promulgated prior to two divisions (DSASA and DAAA) becoming one Office.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. ASA-45-13-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Sr. Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Repeal of 14 NYCRR Parts 10, 51, 71 and 103

I.D. No. ASA-45-13-00018-A
Filing No. 39
Filing Date: 2014-01-14
Effective Date: 2014-01-29

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

Action taken: Repeal of Parts 10, 51, 71 and 103 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.07(a) and 32.02

Subject: Repeal of 14 NYCRR Parts 10, 51, 71 and 103.

Purpose: To repeal outdated regulations.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. ASA-45-13-00018-P.

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

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Senior Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 495-2317, email: Sara.Osborne@oasas.ny.gov

Assessment of Public Comment
The agency received no public comment.

Department of Audit and Control

NOTICE OF ADOPTION

Interest Rates for NYSLERS and NYSPFRS

I.D. No. AAC-47-13-00003-A
Filing No. 29
Filing Date: 2014-01-14
Effective Date: 2014-01-29

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

Action taken: Amendment of sections 300.1, 300.2 and 300.4 of Title 2 NYCRR.

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

Subject: Interest Rates for NYSLERS and NYSPFRS.

Purpose: To update regulations relating to certain rates of interest.

Text or summary was published in the November 20, 2013 issue of the Register, I.D. No. AAC-47-13-00003-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Insurance Premiums on Loans Taken by Members of the NYSLERS and NYSPFRS

I.D. No. AAC-47-13-00004-A
Filing No. 30
Filing Date: 2014-01-14
Effective Date: 2014-01-29

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

Action taken: Amendment of Part 308 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 50, 311 and 350

Subject: Insurance premiums on loans taken by members of the NYSLERS and NYSPFRS.

Purpose: To update the amount of insurance premiums on loans taken by members of the NYSLERS and NYSPFRS.

Text or summary was published in the November 20, 2013 issue of the Register, I.D. No. AAC-47-13-00004-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Disability Retirement for Members Under Article 14 of the Retirement and Social Security Law

I.D. No. AAC-47-13-00005-A
Filing No. 31
Filing Date: 2014-01-14
Effective Date: 2014-01-29

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

Action taken: Amendment of Part 336 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 102, 507, 507-a, 517-c and 519

Subject: Disability Retirement for members under Article 14 of the Retirement and Social Security Law.

Purpose: To update the dates of availability for Disability Retirement for members under Article 14 of the Retirement and Social Security Law.

Text or summary was published in the November 20, 2013 issue of the Register, I.D. No. AAC-47-13-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Membership Contributions and Withdrawals

I.D. No. AAC-47-13-00006-A

Filing No. 33

Filing Date: 2014-01-14

Effective Date: 2014-01-29

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

Action taken: Addition of Part 381 to Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 311 and 1204

Subject: Membership contributions and withdrawals.

Purpose: Establish rules for contributions and withdrawals for members covered by Article 22 of the Retirement and Social Security Law.

Text or summary was published in the November 20, 2013 issue of the Register, I.D. No. AAC-47-13-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Mortality and Service Tables for Valuation Purposes

I.D. No. AAC-47-13-00015-A

Filing No. 32

Filing Date: 2014-01-14

Effective Date: 2014-01-29

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

Action taken: Amendment of section 310.1; repeal of Appendix 10; and addition of new Appendix 10 to Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11(g), 311, 519 and 614

Subject: Mortality and Service tables for valuation purposes.

Purpose: To update the Mortality and Service tables used for valuation purposes.

Text or summary was published in the November 20, 2013 issue of the Register, I.D. No. AAC-47-13-00015-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Child Day Care Regulations

I.D. No. CFS-04-14-00003-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 413; repeal of Part 414 and Subparts 418-1, 418-2; and addition of new Part 414 and Subparts 418-1 and 418-2 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 day care center and school age child care regulations.

Substance of proposed rule (Full text is posted at the following State website:http://ocfs.ny.gov): After a rigorous review of the current regulatory standards for day care centers, school age child care and small day care centers 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, 414, 418-1, and 418-2.

The Office's main objectives in proposing changes to current day care center, school age child care, and small day care center 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 day care centers, school age child care programs and small day care centers. These changes include amendments made as a result of lessons learned since 2005 when the administrations 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 program refuse to administer a medication? May a program stock medication? When may a program 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 programs 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 alternatives. Day care center and school age child care programs must also adhere to the Child and Adult Food Program (CACFP) meal pattern standards. 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, installation of carbon monoxide alarms, changes in technology around phone service, safe sleep practices for infants, and address field trip and water activity safety measures. Firearms, shotguns and rifles will be prohibited at day care centers, school age child care program and small day care centers. However, there will be no prohibition on a police officer, peace officer or security guard from possessing a firearm, shotgun or rifle on the premises for the protection of the child care program. In addition, child care programs will be required to post signs providing notification of such prohibition.

Another key proposed change concerns adoption of an orientation session for applicants. The Office proposes that all applicants seeking day care center licenses or a school age child care registrations complete an on-line orientation program prior to receiving an application. 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 definition to include the need to be close enough to redirect a child and to be aware of each child's ongoing activity. The Office will also be permitting continuity of care classroom models to operate in day care centers. Continuity of care is defined in day care center regulations at 418-1.8(r). A final change is the addition of language requiring all employees hired on or after June 30, 2013 to submit information which would allow directors, and in some cases the Office, to conduct data base checks against the NYS Justice Center Staff exclusion list.

Small day centers are registered to care for more than three and less than seven children. The regulations for small centers are a hybrid between large day care center regulations and family day care regulations. The building safety and equipment sections of the small day care center regulations mirror day care center regulations and program rules and staffing are akin to family day care.

In addition to the categories above, the Office is proposing changes to the length of the regulations and making minor revisions to two definitions and a deletion in wording in citation 413.4(b). The proposed changes in length is more about breaking the regulations up into separate citations than it is about requiring additional standards. This change is significant to programs for the following reason: When an inspector cites a program 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. In Part 413, Definitions, Enforcement and Hearings, the definition of "employee" will include the day care director. The definition of "volunteer" was changed to clarify that a volunteer may assist in the care of children but may not be counted in ratio as meeting the child to assistant or child to teacher ratio and may not be left unsupervised with children. In addition, the words "effective date of this section" were removed from citation 413.4(b), because the phrase refers to a standard already in place.

Text of proposed 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

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:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of the SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 390(2)(d) of the SSL authorizes the Office to establish regulations for the licensure and registration of child day care providers.

Section 410(l) of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Chapter 416 of the Laws of 2000, enacting the Quality Child Care and Protection Act of 2000 (the Act), authorizes the Office to strengthen the existing regulations governing child day care programs. Subdivision 2-A of section 390 of the SSL, added by the Act, requires the Office to establish minimum quality program requirements.

2. Legislative objectives:

The Office's objective in proposing changes to current day care center, school age child care and small day care center regulations is to strengthen health and safety standards, correct conflicting regulatory language, update the regulations with recent changes made to SSL and NYS Building Code, and to make the regulations easier to understand.

3. Needs and benefits:

The proposed changes to the day care center, school age child care and small day care center regulations are needed to correct current regulatory inconsistencies, to incorporate recent statutory amendments, and to clarify the specific deficiency when a program is cited for a regulatory violation. The proposed changes can be organized into six categories: the administration of medication and infection control, obesity prevention, safety and emergency preparedness, legislative changes, terminology and definitions, and training requirements.

The first category, the administration of medication and infection control, includes changes that 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. Changes are needed to correct current inconsistencies in the regulations regarding the authorization needed by the program before administering medication to a child. The proposed changes reorganize the layout of the health and infection control section of the regulation to make referring to the regulations easier. The proposed changes will benefit the programs, children in care, and parents, by relaxing the current restrictions on medication administration, allowing programs discretion in medication administration, allowing programs to stock medication, and permitting a 60 day grace period when a health care consultant ends his/her affiliation with the program.

The second category, obesity prevention, is a topic the Office worked on in collaboration with the Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity; and the NYS Department of Health. The current regulations do not require programs to help children cultivate healthy eating and positive exercise habits to prevent childhood obesity. As a result of combined efforts, the proposed changes balance minimal requirements with parent choice. The regulations will require that the center and school age child care program serve nutritious beverages and meals that comply with the Child and Adult Food Program meal pattern unless the parent supplies alternatives. Small day care centers, day care centers and school age child care programs will be required to serve only low fat milk, 100% juice or water, unless otherwise directed by the parent. In addition, children in all programs must have physical activity every day, and screen time activities will be limited.

The changes to the third category, health, safety and emergency preparedness are needed to address safety and security at the child care program. The proposed regulations require that programs plan for and practice emergency evacuations and sheltering in place drills. The regulations require carbon monoxide alarms, expanded requirements for safe sleep practices, and address field trip and water activity safety measures. Firearms, shotguns and rifles will be prohibited at day care centers, school age child care program and small day care centers. However, there will be no prohibition on a police officer, peace officer or security guard from possessing a firearm, shotgun or rifle on the premises for the protection of the child care program. In addition, child care programs will be required to post signs providing notification of such prohibition. A final change is the addition of language requiring all employees hired on or after June 30, 2013 to submit information which would allow directors, and in some cases the Office, to conduct data base checks against the NYS Justice Center Staff exclusion list.

The fourth category includes statutory requirements not yet included in regulation. These changes are needed to clarify that the requests of the Office are being made because of statutory requirements. Specifically the need to complete a training topic, Education on Shaken Baby Syndrome (school age child care program are excluded); that at least one caregiver in Cardio Pulmonary Resuscitation and first aid must be present; the increase in the licensing or registration period from two-year to four-year intervals; and prohibitions against reissuing a license or registration to a child day care provider whose license or registration was revoked or terminated during the previous two years. The Federal Consumer Product Safety Commission's new standards for cribs are now included in regulation.

The fifth category includes changes to definitions and terms, which are needed to keep pace with the field observations, reflect current acceptable practices, and use of more neutral terms. The proposed regulations change the term "discipline" to behavior management, clarifies the meaning and significance of competent supervision to be close enough to redirect a child and to be aware of each child's ongoing activity. In addition, the proposed regulations allow a continuity of care model to be offered in day care centers. Continuity of care is defined in 418-1.8.(r). Finally, a change was made to the definition of employee and volunteer. The term "employee" will include the day care director. The definition of "volunteer" was changed to clarify that a volunteer may assist in the care of children but may not be counted in ratio as meeting the child to assistant or child to teacher ratio and may not be left unsupervised with children. In addition, the words "effective date of this section" were removed from citation 413.4(b) as it referred to standard already in place.

The sixth category addresses the need to clarify the training requirements associated with operating a child care program. The regulation will require would-be applicants to complete an on-line orientation program prior to receiving an application. The changes also include examples of the types of course that will be accepted toward each of the training topics.

In addition to the above, the Office is proposing changes to the length of the regulations; breaking the current provisions into separate citations. This change is significant because when an inspector cites a violation, 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.

Small day care centers are registered to care for more than three and less than seven children. The regulations for small day care centers are a hybrid between large day care center regulations and family day care regulations. The building safety and equipment mirrors center regulations and program rules and staffing are identical to family day care.

4. Costs:

The implementation of these regulations and the underlying statutory provisions may have minimal costs associated for some programs to post street numbers on the building for emergency vehicles when not already posted, installing carbon monoxide detectors where necessary, storing nonperishable food for all children in case of emergencies, and purchasing nutritious beverages and foods. Average day care center has 80 children; compliance would cost approximately $800. School-age child care program serves on average 96 children, costing $960 to come into compliance. A small day care center's maximum capacity is six children, costing $60 to come into compliance. Programs that serve food daily and have food supplies on site or are co-located with a cafeteria, pantry, or eatery of some kind may plan to access those supplies in a declared emergency. The majority of programs will be able to meet these exemption criteria. New day care centers offering care to infants will be required to install an addition sink in the infant room. One sink will be designated for diapering needs and the other for washing dishes and bottles. Day care centers already in existence are not required to install an additional sink.

The Office will provide, at no cost, an on-line orientation session for all applicants. The Office will use existing resources to implement these regulations. It is expected that programs and their employees will have financial relief by changing renewals from every two years to every four years. Programs and their employees will also experience savings by the elimination of required medical examinations, after the initial medical examination associated with employment.

5. Local government mandates:

No new mandates are imposed on local governments by these proposed regulations.

6. Paperwork:

Paperwork will be reduced because the renewal application is now due on a four year cycle instead of a two year cycle. Regulatory waiver requests will be reduced because of the changes made to the medication administration and authorization provisions. In addition, the proposed regulations eliminate routine medical exams for all staff and volunteers at renewal. An estimated 4,535 child care facilities will no longer be tracking and filing staff medical forms (after the initial medical evaluation). Programs will no longer have to track each employee to ensure he/she completes the medical exam every two years, nor will they have to file and keep such records.

Additional paperwork is required in cases where it documents health and safety issues, and the overall impact will be minimal on facilities. Programs will be required to submit a written emergency plan and evacuation diagram, and will need to document that they held two shelter in place drills annually, this notation can be recorded with the other evacuation drills. Programs will be required to post the transportation services they are providing to children and to share this with parents using the service. The child day care program will be required to enter the actual attendance times of each child and staff person. The "in" time and "out" time for each child and staff person can be an added to the child's attendance form, already in use. A child day care program must document that a daily health care check has been completed on each child in attendance. The Office will accept the addition of a check box on the attendance sheet indicating that the health care check was performed.

A provision was added requiring all employees hired on or after June 30, 2013 to submit information which would allow programs, and in some cases the Office, to conduct data base checks against the NYS Justice Center Staff exclusion list.

Finally, an Office provided sign must be posted at entrances to programs to designate the facility as a firearm free area.

7. Duplication:

The new requirements do not duplicate State or federal requirements.

8. Alternatives:

The Office has met with stakeholders, including child care providers, directors, staff from NYS Department of Health, Centers for Disease Control and Prevention, NYS Department of Education, Child Care Resource and Referral, to develop the proposed regulatory changes. The alternative to the proposed regulations is to continue operation under the current regulations and cite law when the regulations contain out-of-date information or are missing requirements.

9. Federal standards:

The regulations are consistent with applicable federal requirements.

10. Compliance schedule:

These regulations will become effective 180 days after the notice of adoption appears in the State Register.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The proposed regulations will affect all licensed and registered day care centers (excluding NYC centers), school age child care programs and small day care centers in New York State, approximately 4, 535 programs. There are five small day care centers in New York State. Small day care centers employ one or two staff per program, and operate much like a home-based program. Of the estimated 2,000 larger day care centers, 1,910 programs employ less than one hundred staff. Of the estimated 2,561 school-age child care programs, 2,378 programs employ less than one hundred staff. The regulation will affect the 58 social services districts. There is no expected effect on local governments.

2. Compliance requirements:

Additional paperwork is required under the proposed regulations, however the additions are limited to maintaining accurate attendance of children and staff present, documenting a daily health check of each child, documenting evacuation and shelter-in-place drills in accordance with approved plans, posting transportation services provided by the program, developing a written aquatic activity safety plan, submission of demographic information to check applicants against the Justice Center staff exclusion list, and posting Office provided signs banning firearms, rifles and shotguns from the facility. To assist providers in their regulatory compliance efforts, the Office is creating or modifying existing forms to capture the required information in a succinct and helpful manner. For example daily health checks will consist of a check box added to the attendance sheet; shelter in place drills can be recorded with a date and time added to the fire drill record. The Office and its contracted Child Care Resource and Referral (CCR&R) Agencies are positioned to provide technical assistance to programs on all additional requirements in regulation.

No new mandates are imposed on local governments by these proposed regulations.

3. Professional services:

Neither social services districts nor child care programs should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

The implementation of these regulations and the underlying statutory provisions may have minimal costs associated for some day care center, school age child care programs and small day care centers. Some programs have already instituted these safety measures, but for those who have not, additional costs will be limited to posting street numbers on the building for emergency vehicles when not already posted, installing carbon monoxide detectors where necessary, storing nonperishable food for all children in case of emergencies, and purchasing nutritious beverages and foods. The changes are not expected to have any adverse fiscal impact on programs.

The Office will provide an on-line orientation session for all applicants. The Office will use existing resources to implement these regulations. It is expected that programs will have financial relief by changing renewals from every two years to every four years. Programs and their staff will also experience savings by the elimination of required medical examinations, after the initial medical examination associated with employment.

Cure Period

Part 413.2(f)(4) includes a period of time for regulated parties to cure matters that will become subject to a penalty. Where a child day care licensee or registrant demonstrates that corrective action has been taken within thirty (30) days of notification of the imposition of the penalty, a fine will not be imposed, except as permitted pursuant to Social Services Law Section 390(11)(c)(ii).

5. Economic and technological feasibility:

The child care programs and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

The Office collaborated with staff from NYS Department of Health, Center for Disease Control and Prevention, NYS Department of Education, Child Care Resource and Referral, Directors, staff and social services districts in developing the proposed regulatory changes. Orientation will be a free on-line session. All requirements for documentation (paperwork) are supported by Office supplied and web-based access to forms designated for each purpose. The Office currently offers CPR and first aid training slots to eligible staff at no cost. Red Cross is the Office contracted agency that offers CPR and first aid to child care providers and classes are held during times when providers would be available (evenings and weekends). The Office is working in collaboration with the New York State Child Care and Adult Food Program (CACFP) to advertise and support enrollment in the CACFP program which will reimburse eligible providers for food and drink for children at the child day care program.

7. Small business and local government participation:

The Office has met with day care providers, Child Care Resource and

Referral Agencies, directors and staff, and social service districts to inform the field of regulations under review and marked for changes. Comments and input have been assessed for inclusion in the proposed regulations.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect all day care centers, school age child care programs and small day care centers in all 44 rural areas of the State. There are approximately 1,029 programs in rural areas.

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

Additional paperwork is required under the proposed regulations, however the additions are limited to maintaining accurate attendance of children and staff present, documenting a daily health check of each child, documenting evacuation and shelter-in-place drills in accordance with approved plans, posting transportation services provided by the program, submission of demographic information to check applicants against the Justice Center staff exclusion list and posting Office provided signs banning firearms, rifles and shotguns from the facility.

No new mandates are imposed on local governments by these proposed regulations.

3. Costs:

The implementation of these regulations and the underlying statutory provisions may have minimal costs associated with them. Some programs have already instituted these safety measures, however, necessary additional costs will be limited to posting street numbers on the building for emergency vehicles when not already posted, installing carbon monoxide detectors where necessary, storing nonperishable food for all children in case of emergencies, and purchasing nutritious beverages and foods. The changes are not expected to have any adverse fiscal impact on programs.

The Office will provide an on-line orientation session for all applicants. The Office will use existing resources to implement these regulations. It is expected that programs will have financial relief by changing renewals from every two years to every four years. Programs and their staff will also experience savings by the elimination of required medical examinations, after the initial medical examination associated with employment.

4. Minimizing adverse impact:

The Office collaborated with staff from NYS Department of Health, Center for Disease Control and Prevention, NYS Department of Education, Child Care Resource and Referral, directors and child care staff and social services districts in developing the proposed regulatory changes. Orientation will be an on-line session offered at no cost. All requirements for documentation (paperwork) are supported by Office supplied and web-based access to forms designated for each purpose. The Office currently offers CPR and first aid training slots to eligible staff at no cost. The Office is working in collaboration with the New York State Child Care and Adult Food Program (CACFP) to advertise and support enrollment in the CACFP program which will reimburse eligible programs for food and drink for children at the child day care program.

The Office is preparing revised forms and new forms to capture all required documentation. Forms will be available on its website or through the OCFS warehouse.

5. Rural area participation:

The Office has met with providers, Child Care Resource and Referral agencies, directors and staff, social service districts and Infant-Toddler Specialists to help inform our thinking on these regulations.

Job Impact Statement

Nature of Impact: The Office does not expect any employee reductions based on proposed regulation.

Categories and Numbers Affected: There are no changes in categories or numbers.

Regions of Adverse Impact: There are no regions where the regulations would have a disproportionate adverse impact on jobs or employment opportunities.

Self-Employment Opportunities: No measureable impact on opportunities for self-employment is expected.

Department of Civil Service

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Civil Service publishes a new notice of proposed rule making in the NYS *Register*.

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-02-13-00003-P	January 9, 2013	January 9, 2014

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-04-14-00001-E
Filing No. 23
Filing Date: 2014-01-08
Effective Date: 2014-01-08

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

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

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

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

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

Subject: Empire Zones reform.

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

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

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

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

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

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

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

Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

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

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

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

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

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

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

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

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

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

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

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

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official 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 April 7, 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 Commis-

sioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

COSTS:

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

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

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

LOCAL GOVERNMENT MANDATES:

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

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

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

2. Compliance requirements

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

3. Professional services

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

4. Compliance costs

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minority and Women-Owned Business Enterprise Program

I.D. No. EDV-04-14-00010-P

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

Proposed Action: Amendment of Parts 140-145 of Title 5 NYCRR.

Statutory authority: L. 2010, ch. 175

Subject: Minority and Women-Owned Business Enterprise program.

Purpose: Update the regulations of the Division of Minority and Women's Business Development.

Substance of proposed rule (Full text is posted at the following State website:www.esd.ny.gov): The proposed regulation makes extensive changes to the existing regulations governing the Division of Minority and Women's Business Development ("DMWBD") and the Minority and Women-Owned Business Enterprise ("MWBE") program. For the purpose of clarity, the regulation repeals existing Parts 141 and 142 of 5 NYCRR and replaces them with new Parts 141 and 142. In addition, amendments to Parts 140, 143, 144 and 145 will be outlined in further detail below. The following is a brief summary of the substantive changes made in the new Parts 140-145:

1) The regulation adds four new definitions to Part 140, including the definitions of the terms "commercially useful," "disparity study," "master goal plan" and "update to master goal plan." Importantly, the regulation amends the definition of "certified enterprise or certified business," "contracting categories," "minority-owned business enterprise," "personal

net worth," "state agency," "subcontract," "substantially fails," "value added," and "woman-owned business enterprise." The regulation deletes references to "The 2010 disparity study."

2) The regulation replaces the existing requirement for agencies to adopt annual goal plans with a requirement to adopt a master goal plan at least once every four years. This master goal plan is to include specific goals for MWBE participation with respect to the four procurement categories covered under the program: construction, construction related services, services, and commodities. Furthermore, the regulation establishes criteria to be taken into account by agencies in establishing their master goal plans.

3) The regulation clarifies State agencies' annual goal setting process by requiring each State agency to set agency-specific goals in accordance with Article 15-A of the Executive Law.

4) The regulation clarifies submission procedures for State agencies' master goal plans and updates thereto. State agencies are required to submit master goal plans, or updates to master goal plans, to the Director of the DMWBD annually on or by January 15. Proposed master goal plans are to be reviewed by the Director to determine whether they are reasonable and appropriate in light of agency procurement circumstances. The Director is empowered to reject unreasonable submissions, and to require submitting agencies to amend their submission or, where appropriate, set goals on behalf of a State agency.

5) The regulation introduces additional factors to be considered by the Director when assessing a State agency's "good faith efforts" including State agencies' processes and procedures concerning goal-setting, utilization plans, utilization reports and waivers.

6) The regulation provides that a State agency may be found to have failed to meet its good faith standard if it refuses or fails to submit a master goal plan or update to the master goal plan to the DMWBD.

7) The regulation clarifies minimum standards for agencies' submissions of remedial action plans to the Director after an agency substantially fails to meet its agency-specific goals.

8) The regulation requires agencies to set goals, where practical, feasible, and appropriate, for minority-owned, women-owned, and overall MWBE utilization on State agency contracts. The regulation further introduces additional factors to be considered by State agencies in determining whether goals are appropriate with respect to individual contracts, including: potential subcontracting opportunities available in the prime contract; MWBE availability as identified in the most recent disparity study with respect to the subcontracting opportunity; the number and types of MWBEs found in the state MWBE directory; the geographic location of contract performance; the extent to which geography is material to the performance of the contract; the ability of certified MWBEs located outside of the geographic location of contract performance to perform on the contract; and, the agency's annual utilization goal.

9) The regulation clarifies that a contractor that is a certified MWBE may use the work it performs on a state contract to meet requirements for use of certified MWBEs as subcontractors.

10) The regulation makes technical amendments to language and clarifies standards for agencies' evaluation of contractors' diversity practices. Diversity Practices will only be assessed, where practical, feasible and appropriate, in best value contracts over $250,000. Where an agency determines that it is practical, feasible and appropriate to evaluate the diversity practices of a contractor, the agency is directed by the regulation to require such information to be included in the contractor's bid or proposal, and to establish a quantitative factor for evaluating diversity practices. The regulation further clarifies that numerical guidelines will be provided to State agencies by the Director for the purpose of evaluating contractors' diversity practices.

11) The regulation adds the requirement that certified MWBEs must be able to perform commercially useful functions in order to be listed on accepted utilization plans. The regulation further requires each utilization form to contain a statement acknowledging that use of certified MWBEs for non-commercially useful functions is strictly prohibited.

12) The regulation disallows the acceptance of alternative plans in lieu of acceptable utilization plans that identify the manner in which contractors plan to utilize certified MWBEs to achieve contract goals set forth in solicitations.

13) The regulation disallows contractors to take MWBE utilization credit for contract performance by any certified MWBE that has not performed a commercially useful function.

14) The regulation clarifies the ability of a State agency to disqualify a contractor as non-responsive for failure to remedy a deficient utilization plan.

15) The regulation provides that, in assessing whether a contractor made a good faith effort to satisfy utilization plan goals, an agency may consider whether a contractor knowingly utilized, or submitted compliance reports indicating the utilization of, MWBEs the contractor knew or reasonably should have known could not or did not perform a commercially useful function on a State contract.

16) The regulation permits agencies to consider, inter alia, the extent to which contractors' own actions contributed to contractors' inability to meet the maximum feasible portion of contract goals in assessing waiver requests.

17) The regulation allows agencies, in instances where agencies are not evaluating contractors' diversity practices, to establish a quantitative scoring factor for bidders' certified MWBE status.

18) The regulation adds work force utilization data collection requirements for contracts over $250,000 and removes work force collection requirements that were inconsistent with Article 15-A of the Executive Law.

19) The regulation requires the DMWBD to notify applicants of deficiencies in their applications to be certified as MWBEs within thirty days of the initial date stamped on their application.

20) The regulation requires the DMWBD to provide applicants with notice that their application is complete.

21) The regulation provides for the ability of the DMWBD to request and assess additional information, including tax and financial information, leases and business agreements, to ascertain applicants' program eligibility.

22) The regulation provides for the ability of the DMWBD to request and assess additional information to ascertain and/or identify an applicant's ability and/or capacity to perform a commercially useful function on certain State contracts.

23) The regulation prohibits the investigation of third-party allegations that an MWBE no longer meets program certification requirements except where the allegations are specific and supported by facts.

24) The regulation establishes that a presumption of eligibility shall remain in effect during the pendency of a challenge to the continued eligibility of a firm for certification as an MWBE.

Text of proposed rule and any required statements and analyses may be obtained from: Karanja Augustine, NYS Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12245, (518) 292-5120, email: kaugustine@esd.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

STATUTORY AUTHORITY:

Chapter 175 of the Laws of 2010 empowers the Commissioner of the Department of Economic Development to promulgate regulations for the administration of the Minority and Women-Owned Business Enterprise ("MWBE") program. This authority includes the adoption of procedures for the adoption of goal plans by state agencies for MWBE utilization, review of utilization plans by contractors, and certification of businesses as MWBEs. This regulatory impact statement is submitted in conjunction with the submission of a permanent regulation.

LEGISLATIVE OBJECTIVES:

The proposed rule is in accord with the public policy objectives the New York State Legislature sought to advance by enacting the MWBE Program. The program requires state agencies to set goals for participation by minority and women-owned businesses on agency contracts, and to approve utilization plans by contractors for the use of certified MWBEs on their contracts. It is the public policy of New York to address historic discrimination in the state contracting market, and to achieve the economic benefits associated with a competitive state contracting market free of discrimination, through the MWBE program. The proposed rule helps to further such objectives by updating the procedures through which agencies establish goals for participation in state contracts by minority and women-owned businesses, refining the criteria for goal setting so as to better reflect the individual circumstances and capacities of each agency, and modifying the metrics by which agencies assess the availability of minority and women-owned businesses and grant exemptions to contractors' utilization plans.

NEEDS AND BENEFITS:

This rulemaking is made pursuant to Chapter 175 of the Laws of 2010. The statute authorizing the MWBE Program directs the Commissioner of the Department of Economic Development to establish procedures for the administration of the program.

New York has a history of unequal access to performance on state contracts for businesses owned by women and minorities. The state has addressed these disparities, in part, through the MWBE program. Disparities in access to state contracts have been reduced, but continue to persist in all four of the areas of state contracting addressed by the MWBE program: construction, construction related services, services, and commodities.

Certain provisions of the regulations administering the program have become redundant as program objectives and obligations have been achieved. Furthermore, certain aspects of the administration of the

program relating to the setting of goals by agencies and the assessment of the availability of minority and women-owned businesses have not been optimized.

The proposed regulation addresses the shortcomings of the existing regulations in a number of ways. First, these rules update the regulations so as to remove references to historic goals and obligations, and replaces such references with durable language that will not need to be updated through similar rulemakings in the future. Furthermore, the rules adjust the procedures by which agencies set goals for contract participation by minority and women-owned businesses so as to better reflect the individual needs and capabilities of each agency. Additionally, the rules expand the scope of agency review of requests by contractors for waivers from goal requirements to better hold contractors accountable to the purposes of the program, as well as the metrics by which the availability of minority and women-owned businesses are assessed in the process of setting contract-specific goals.

COSTS:

I. Costs to private regulated parties (contractors on state contracts): None. The proposed regulation will not impose any additional costs on contractors awarded state contracts.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None. The proposed regulation will not impose any costs on local governments.

LOCAL GOVERNMENT MANDATES:

None. There are no local government mandates associated with the MWBE program.

PAPERWORK:

The rule does not establish any paperwork burdens in addition to those already imposed under the regulation.

DUPLICATION:

The proposed rule will amend an existing section of the regulations of the Commissioner of the Department of Economic Development, Parts 140–45 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered with regard to creating a new regulation in response to the statutory requirement. The regulation updates existing provisions of the NYCRR. This action is necessary in order to update redundant language, and to streamline the procedures of the program related to goal setting and adoption of utilization plans for agency procurement contracts.

FEDERAL STANDARDS:

There are no federal standards applicable to the MWBE Program; it is purely a state program that promotes participation on certain state procurement contracts by minority and women-owned businesses. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected agency (Department of Economic Development) and any affected contractors seeking to perform on state procurement contracts will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Application to the minority and women business enterprise (MWBE) program is entirely at the discretion of each eligible business enterprise. Neither Executive Law Article 15-A nor the proposed regulations impose an obligation on any local government or business entity to participate in the program. The proposed regulation does not impose any adverse economic impact, reporting, record-keeping, or other compliance requirements on small businesses and/or local governments. In fact, because by law MWBE firms must be small businesses, the proposed regulations may have a positive economic impact on small businesses as the changes created in the proposed regulations may increase the number of certified small businesses that are able to access contracting opportunities throughout New York State.

For clarification purposes, the changes crafted in the proposed regulation do not affect local governments because MWBE contract and reporting requirements attach to New York State funded contracts, not locally funded projects. Because it is evident from the nature of the proposed rule that it will have either no substantive impact, or a positive impact, on small businesses and local governments, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The minority and women business enterprise program is a statewide program. There are eligible businesses in rural areas of New York State. However, participation in the program is entirely at the discretion of eligible business enterprises. The program does impose some responsibility on those businesses which participate such as submitting applications and reports. None of those requirements, however, are being changed by this amendment. The rule change will not impose any additional substantial reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the regulation will not have a substantial adverse economic impact on rural areas and will not impose 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 Minority and Women-Owned Business Enterprise (MWBE) program aims to remedy disparate access to performance on state contracts for minority and women-owned businesses. The amendments to the MWBE program update certain redundant provisions of the regulation, and streamline the procedures by which agencies set goals and evaluate the availability of MWBEs. To the extent that the regulation increases the utilization of MWBEs, it will not have a substantial adverse impact on jobs and employment opportunities as it will neither decrease nor increase the available work through state procurements. Because it is evident from the nature of the rulemaking that it will have no 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.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No. EDU-04-14-00004-EP
Filing No. 35
Filing Date: 2014-01-14
Effective Date: 2014-01-14

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

Proposed Action: Amendment of section 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), 308(not subdivided), 309(not subdivided), 3204(3), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: On December 20, 2013, the United States Department of Education (USDE) granted the State Education Department a one-year waiver (for the 2013-2014 school year) from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that the Department may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. However, the result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll. The proposed amendment will conform existing regulations with the newly-granted waiver.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the April 28-29, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be May 14, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to immediately adopt the proposed rule is necessary for the preservation of the

general welfare to ensure that local educational agencies are given sufficient notice to timely implement the USDE waiver regarding the administration of Regents Examinations in Algebra I (Common Core) and Geometry to grade 7 and 8 students for the 2013-14 school year.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the April 28-29, 2014 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability.

Purpose: To provide flexibility to LEAs in the administration of Regents mathematics examinations (Common Core) students in grades 7-8.

Text of emergency/proposed rule: Paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective January 14, 2014, as follows:

(14) Performance levels shall mean:

(i) for elementary and middle grades:

(a) level 1 (well below proficient)

(1) not on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student does not have a growth percentile target; or a score of level 1 on a State alternate assessment*; or a score of 64 or less, or a comparable score as approved by the Board of Regents, on a Regents examination in mathematics for a student in grade 7 or grade 8*.

(2) on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 1 on State assessments in science or other State assessments, or a score of level 1 on a State alternate assessment;

(b) level 2 (below proficient)

(1) not on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student does not have a growth percentile target; or a score of level 2 on a State alternate assessment;

(2) on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 2 on State assessments in science or other State assessments, or a score of level 2 on a State alternate assessment;

(c) level 3 (proficient)

(1) a score of level 3 on State assessments in English language arts, mathematics and science or a score of level 3 on a State alternate assessment;

(2) a score of 65 or higher*, or a comparable score as approved by the Board of Regents,* on a Regents Examination in science *or mathematics* for students in grade *seven or* eight pursuant to subdivision 100.4(d) of this Part;

(d) level 4 (excels in standards): a score of level 4 on State assessments in English language arts, mathematics and science or a score of level 4 on a State alternate assessment;

(ii) for high school:

(a) level 1 (well below proficient)

(1) a score of 64 or less on the Regents comprehensive examination in English or a Regents mathematics examination;

(2) a failing score on a State-approved alternative examination for those Regents examinations.

(3) a score of level 1 on a State alternate assessment;

(4) a cohort member who has not been tested on the Regents comprehensive examination in English or a Regents mathematics examination or State-approved alternative examination for these Regents examinations;

(b) level 2 (below proficient)

(1) a score between 65 and 74 on the Regents comprehensive examination in English or between 65 and 79 on a Regents examination in mathematics.

(2) a score of level 2 on a State alternate assessment;

(c) level 3 (proficient)

(1) a score between 75 and 89 on the Regents comprehensive examination in English or between 80 and 89 on a Regents examination in mathematics; or [passes] a *passing score on a* State-approved alternative to those Regents examinations;

(2) a score of level 3 on a State alternate assessment;

(d) level 4 (excels in standards)

(1) a score of 90 or higher on the Regents comprehensive examination in English or a Regents mathematics examination;

(2) a score of level 4 on a State alternate assessment;

(iii) Notwithstanding the provisions of this section:

(a) For students who attend grade 7 or 8 and take a Regents examination in mathematics in the 2013-2014 school year, but do not take the Grade 7 or 8 Mathematics Assessment, participation and accountability determinations for the school in which the student attends grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on mathematics assessments taken after the student first enters grade 9. For such students, a score of 65 or above, or a comparable score as approved by the Board of Regents, on a Regents Examination in mathematics taken in grade 9 or thereafter will be credited as level 3 for purposes of calculating the High School Performance Index.

(b) For students who attend grade 7 or 8 and who take both the Grade 7 or 8 Mathematics Assessment and a Regents Examination in mathematics during the 2013-2014 school year, participation and accountability determinations for the school such students attend in grade 7 or 8 shall be based upon the student's performance on the Grade 7 or 8 Mathematics Assessment.

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 April 13, 2014.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

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:

Education Law section 101 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department's Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

Education Law section 207 empowers Regents and Commissioner to adopt rules and regulations to carry out State education laws and functions and duties conferred on Department.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 210 authorizes Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law section 215 authorizes Commissioner to require schools and school districts to submit reports containing such information as Commissioner shall prescribe.

Education Law section 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides Commissioner shall have such further powers and duties as charged by the Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general

or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges Commissioner with general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes SED to alter the subjects of required instruction.

Education Law section 3713(1) and (2) authorize State and school districts to accept federal law making appropriations for educational purposes and authorize Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to public school and district accountability.

3. NEEDS AND BENEFITS:

At its October 2013 meeting, the Board of Regents directed the State Education Department (SED or "the Department") to submit a request to the United States Department of Education (USDE) to waive provisions of the federal Elementary and Secondary Education Act (ESEA) [Sections 1111(b)(1)(B) and 1111(b)(3)(C)(i)] that require states to measure the achievement of standards in mathematics using the same assessments for all students.

On December 20, 2013, USDE granted SED a one-year waiver (for the 2013-2014 school year) from ESEA §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that the Department may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. However, the result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll. The proposed amendment will conform existing regulations with the newly-granted waiver.

Currently, seventh and eighth grade students who are receiving instruction in Algebra I and who take the Regents Examination in Algebra I (Common Core) are also required to take the NYS Common Core Mathematics Test for the grade in which they are enrolled. The same requirement also applies to students who are receiving instruction in Geometry and who take the Regents Examination in Geometry.

Based on the waiver, the proposed amendment to 8 NYCRR § 100.18(b)(14) will permit local educational agencies (LEAs) to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7 and 8. This provision also applies to students in grades 7 and 8 who receive instruction in Geometry and who take the Regents Examination in Geometry. The waiver serves to relieve students, teachers, and schools from having to prepare students in seventh and eighth grade who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

The proposed amendment also reflects the way in which student results will be used for institutional accountability purposes under the waiver:

- If a district opts to have accelerated students take the NYS Grade 7 or 8 Common Core Mathematics Test in addition to one or both Regents Examinations in Algebra, the results from the NYS Grade 7 or 8 Common Core Mathematics Test will be used for institutional accountability purposes rather than the results from a Regents Examination in mathematics. Students who take the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be counted as participants when determining the participation rate in mathematics for the school they attend in grade 7 or 8. The result on the Regents Examination in Algebra I (Common Core) taken in grade 7 or 8 will not count towards the participation rate in mathematics for the high school in which they later enroll. The same rule would apply for any students who take the Regents Examination in Geometry in grade 7 or 8.
- Results for students who take only the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be incorporated into the Performance Index for the school in which the student is enrolled. Grade 7 or 8 students who accelerate and obtain, at a minimum, the score on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will, for the purposes of calculating a school's or a district's Performance Index, be counted at the "full credit" level. Grade 7 or 8 students who do not obtain scores on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will earn the school or district "no credit" for the student's performance. The same rule will apply to seventh and eighth grade students who take another Regents Examination in mathematics (e.g., Geometry).
- The waiver and proposed regulatory amendments pertain to institutional accountability requirements, not to the requirements that individual students must meet in order to graduate from high school. The waiver does not change (i.e., the waiver neither increases nor decreases) the requirements students must currently meet in order to obtain a diploma. However, for institutional accountability, high schools will only get credit in the Performance Index for Regents exams or their equivalents that are taken after a student first enters ninth grade, even if students have taken Regents exams in math or their equivalents in grade 7 or 8.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8 and will not impose any additional costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment will reduce costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for ''double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8, and will not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment will reduce compliance requirements and costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for ''double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

6. PAPERWORK:

The proposed amendment does not impose any specific recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations and otherwise implement a one-year waiver (for the 2013-2014 school year) granted by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i). There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to, and otherwise implement, a one-year waiver (for the 2013-2014 school year) granted to the State Education Department by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

10. COMPLIANCE SCHEDULE:

It is anticipated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to the one-year waiver (for the 2013-2014 school year) granted to the State Education Department (SED) by the United States Department of Education (USDE) from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The rule applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act of 1965, as amended.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8, and will not impose any additional compliance requirements upon local governments. The proposed amendment will reduce compliance requirements by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8 and will not impose any additional costs on local governments. The proposed amendment will reduce costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule imposes no technological requirements on school districts. Costs are discussed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations and to otherwise implement a one-year waiver (for the 2013-2014 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

The proposed amendment will reduce compliance requirements and costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed rule have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts and to charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to public school and school district accountability. Accordingly, there is no need for a shorter review period. Specifically, the proposed amendment conforms the Commissioner's Regulations to, and otherwise implements, a one-year waiver (for the 2013-2014 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act (ESEA) of 1965, as amended, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8, and will not impose any additional compliance requirements upon local governments. The proposed amendment will reduce compliance requirements by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8 and will not impose any additional costs on local governments. The proposed amendment will reduce costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to, and otherwise implement, a one-year waiver (for the 2013-2014 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll. The proposed amendment will reduce compliance requirements and costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments The rule has been carefully drafted to meet specific federal and State requirements. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts and charter schools in rural areas.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for review and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to public school and school district accountability. Accordingly, there is no need for a shorter review

period. Specifically, the proposed amendment conforms the Commissioner's Regulations to, and otherwise implements, a one-year waiver (for the 2013-2014 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule making relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to, and to otherwise implement, the one-year waiver (for the 2013-2014 school year) granted to the State Education Department by the United State Department of Education from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed rule applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed rule that it will have no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Definition of Part-Time Experience for Permanent or Professional Certification

I.D. No. EDU-45-13-00032-A

Filing No. 34

Filing Date: 2014-01-14

Effective Date: 2014-01-29

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

Action taken: Amendment of section 80-1.1(b)(47) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), 3001(2), 3006(1)(b) and 3009(1)

Subject: Definition of part-time experience for permanent or professional certification.

Purpose: To provide certification candidates serving as substitute teachers with an alternative to meet part-time continuous service experience requirements.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. EDU-45-13-00032-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Pupils with Limited English Proficiency (LEP)

I.D. No. EDU-45-13-00034-A

Filing No. 37

Filing Date: 2014-01-14

Effective Date: 2014-02-01

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

Action taken: Amendment of sections 154.2 and 154.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1), (2), 2117(1), 3204(2), (2-a), (3) and (6)

Subject: Pupils with limited English proficiency (LEP).

Purpose: To specify the NYS Identification Test for English Language Learners (NYSITELL) for purposes of identifying LEP pupils.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. EDU-45-13-00034-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Impartial Due Process Hearings for Special Education Matters

I.D. No. EDU-45-13-00035-A

Filing No. 38

Filing Date: 2014-01-14

Effective Date: 2014-01-29

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

Action taken: Amendment of sections 200.1, 200.5 and 200.16 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2), (20), 3214(3)(g), 4402(1), (2), 4403(3), 4404(1), 4410(7)(b) and (13)

Subject: Impartial due process hearings for special education matters.

Purpose: Ensure that due process hearings are conducted in a more efficient and expeditious manner in order to meet statutory time lines.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. EDU-45-13-00035-EP.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 464-6400, email: legal@mail.nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on November 6, 2013, the State Education Department (SED) received the following comments on the proposed amendment.

Section 200.1(x) – Impartial Hearing Officer (IHO) Availability

COMMENT:

Ensures sufficient number of IHOs; discourages unwillingness to accept appointment without good cause.

DEPARTMENT RESPONSE:
Comments supportive.
COMMENT:
Many reasons why IHO may not serve; invites litigation. Conflicting appointments or active IHOs who cannot take on additional cases is not unwillingness. Do not require training while IHOs inactive.
DEPARTMENT RESPONSE:
Allows good cause to be established on a case-by-case basis. All IHOs must participate in required training.
COMMENT:
Does not address IHO inadequate compensation.
DEPARTMENT RESPONSE:
District develops IHO compensation policy within State maximum rate. Compensation must include pre-hearing, hearing, and post-hearing activities, reimbursement for travel and other hearing-related expenses.
Section 200.5(j)(3)(i)– IHO Impartiality
COMMENT:
Impartiality necessary. Addresses conflict between acting as advocate and maintaining neutrality. Will decrease challenges to IHO impartiality; reduce IHO appointment time.
DEPARTMENT RESPONSE:
Comments supportive.
COMMENT:
Add IHOs cannot serve when they have represented parents in special education matters in State during past two years and/or have submitted written or oral testimony in any action against district.
DEPARTMENT RESPONSE:
Not appropriate to further restrict IHO's appointment based on representation of parties in other matters or districts. Many IHOs have other employment responsibilities; purpose is to further ensure IHOs do not have professional conflicts of interest with districts in which IHO presides. Parties may challenge IHO impartiality.
Section 200.5(j)(3)(ii) - Consolidation
COMMENT:
Redundant to repeat testimony; will save time and money; offers IHOs clarity on how and when consolidation can occur; prevents forum shopping.
DEPARTMENT RESPONSE:
Comments supportive.
COMMENT:
Prohibit consolidation if subsequent complaint is filed within five days of hearing commencement, unless other party consents.
DEPARTMENT RESPONSE:
Decline as it may not be in the interests of judicial economy or the student's educational interests. IHO has discretion to determine consolidation appropriateness. Party may amend complaint only if other party consents in writing and has opportunity for resolution meeting; or IHO grants permission. Does not circumvent limits imposed on IHO's authority to grant permission for amended complaint.
COMMENT:
If parties jointly oppose assignment to same IHO or consolidation of two complaints, matters should be assigned to different IHOs. Only allow for same school year issues identified in initial request.
DEPARTMENT RESPONSE:
Consolidation determination would be at IHO discretion based on regulatory considerations.
COMMENT:
Will allow 'forum shopping'.
DEPARTMENT RESPONSE:
If proceeding is pending and another complaint notice is received for the same student involving same parties, district would be required to appoint same IHO (unless that IHO is unavailable). IHO would determine whether to consolidate. Once decision is rendered, nothing would require the same IHO be appointed for additional requests for same student. If subsequent complaint is filed on student while hearing is pending before IHO on same student, complaint would be forwarded to IHO to determine whether to consolidate. Only if hearing is pending would subsequent complaint be forwarded to same IHO.
COMMENT:
Consideration factors should be in guidance.
DEPARTMENT RESPONSE:
Regulations ensure statewide consistency in IHO practice.
Section 200.5(j)(4)(iii) –So-ordered decisions
COMMENT:
IHOs should render decisions on matters they have knowledge of.
DEPARTMENT RESPONSE:
Comments supportive.
COMMENT:
Clarify "matters not before the IHO in complaint" do not contradict flexibility with regard to proposed relief in complaint which is required only to include "a proposed resolution of the problem to the extent known and available at the time". Allow IHO to order appropriate remedy, especially when parties jointly request.
DEPARTMENT RESPONSE:
Wouldn't limit IHO from so-ordering appropriate remedies related to issues in complaint or amended notice.
COMMENT:
Would divide settlement into enforceable and unenforceable terms. Does not foster desired efficient settlement outcomes. Mandate so-ordered settlements to provide judicial oversight to fully protect children's rights.
DEPARTMENT RESPONSE:
By federal and State law, all terms of settlement agreements are enforceable in court, not just those IHO "so-ordered".
COMMENT:
Law does not prohibit or disfavors so-ordering a remedy not sought in complaints. IHO remedial power is broadly defined; may order any remedy to resolve the dispute and assist parties in working together. Judicial sanction should be involved in any settlement involving the interest of a child. Provide IHO latitude based on case specifics and party agreement.
DEPARTMENT RESPONSE:
Nothing in proposed amendment "disfavors or discourages" settlement. Parties may reach agreement on other issues; IHO jurisdiction is limited to complaint issues. If issue in settlement agreement is within IHO jurisdiction, complaint notice could be amended with written party agreement or by submission of a separate complaint notice.
COMMENT:
Will make settlement cumbersome process, involving IHO reviewing terms in detail.
DEPARTMENT RESPONSE:
IHOs should be clear regarding the terms of any decisions rendered. Proposed amendment doesn't require testimony or production of evidence as would be required at hearing.
COMMENT:
Should parties become aware of information subsequent to the hearing initiation, that information may impact appropriate outcome.
DEPARTMENT RESPONSE:
Do not agree that rule will have negatively impact parties reaching settlement agreements. Agreements are routinely reached through resolution and mediation sessions that are not IHO 'so-ordered'. Parties may amend complaint notice if they become aware of information after hearing initiation.
COMMENT:
Allow IHO discretion. Revise to limit IHOs orders on issues outside the scope of their subject matter jurisdiction (such as attorney fees), not on stipulations that globally address special education issues (evaluation, program, placement, reimbursement).
DEPARTMENT RESPONSE:
IHOs must use appropriate discretion to determine if settlement would remedy issues in complaint notice. However, "stipulations that globally address a student's special education issues" may or may not be related to the complaint or amended notice. While parties may reach agreement on other issues, IHOs are limited in jurisdiction to issues raised in the complaint.
Section 200.5(j)(5) – Decision timeline
COMMENT:
Several supported. Student's education is at stake; rendering timely decisions is essential. Adheres to federal timelines.
DEPARTMENT RESPONSE:
Comments supportive.
COMMENT:
Allow more time to avoid rushed decisions.
DEPARTMENT RESPONSE:
Timeline is consistent with federal timelines and cannot be revised to allow more time.
Section 200.5(j)(5) – Submission of a redacted decision to SED
COMMENT:
Several supported. One stated: given the technology that exists, an IHO shouldn't need an additional 15 days to mail a properly redacted decision.
DEPARTMENT RESPONSE:
IHOs must transmit decision to the parties within 14 days from the record close date. Current regulations require that IHOs transmit redacted copies of decisions to SED within that same timeframe. Proposed regulation provides IHOs with additional time to complete redactions and transmit to SED after the decision has been mailed to the parties.
COMMENT:
Present redaction requirements are burdensome and diminish access to decisions. Clarify that the time and cost of redactions will not transfer to districts.
DEPARTMENT RESPONSE:
IHO requirement for redacted copy of decision to SED is a long-

standing requirement, based on federal regulation. SED's redaction guidelines are also consistent with standards for release of documents under Freedom of Information Law (FOIL) and ensure protection of student confidentiality.

Section 200.5(j)(5)(i)-(iv) - Extensions

COMMENT:

Most strongly supported prohibiting IHOs from soliciting extensions or unilaterally issuing extensions for any reason; and supported additional flexibility to grant an extension for settlement purposes. Ensures matter is timely resolved while providing IHO flexibility to grant extensions for settlement discussions; may help resolve more cases without hearings.

DEPARTMENT RESPONSE:

Current regulatory legal standard requires IHO to find a compelling reason or specific showing of substantial hardship before doing so. Under proposed amendment, IHO must find good cause based on likelihood that settlement agreement may be reached before granting an extension for this reason. While the legal standard has been relaxed, IHOs may not grant such extensions without first making findings of good cause. IHO may only grant an extension after fully considering the factors provided in section 200.5(j)(5)(ii).

COMMENT:

The language: The impartial hearing officer shall not rely on the agreement of the parties [is not a sufficient] as a basis for granting an extension" undermines cooperative efforts between the parties.

DEPARTMENT RESPONSE:

Parties may agree to extension request but IHO may not use this as basis for granting without first fully considering section 200.5(j)(5)(ii) factors.

COMMENT:

School holidays frequently render witnesses unavailable. Revise to eliminate prohibition on consideration of schedules of the parties and their representatives. Limiting extensions to 30 days often necessitates successive extensions; IHOs spend extra time to document successive extensions. IHO's should be permitted to grant 60 day extensions.

DEPARTMENT RESPONSE:

Recommended changes would be counter to SED's commitments under a court settlement (see Engwiller v. Mills et al., 00 CV 2436) to develop stringent time line requirements for special education hearings as well as to the intent of the proposed regulation to provide for more timely and efficient hearings.

COMMENT:

IHOs should not be required to create written decisions on extensions.

DEPARTMENT RESPONSE:

Proposed amendment does not require a written decision on extension requests but that IHOs respond in writing to the parties on each request for an extension and set forth the facts relied upon for each extension granted.

Sections 200.5(j)(5); 200.5(j)(5)(vi) - Record

COMMENT:

IHOs should promptly transmit record and decision to district. Ensures timely changes/additions to student's program and placement. Existing regulations omitted requirement for IHOs to transfer record to district.

DEPARTMENT RESPONSE:

Comments supportive.

COMMENT:

Include timeline for submission of record.

DEPARTMENT RESPONSE:

Regulation would require timely submission; not necessary to require specific number of days.

COMMENT:

Proposed definition vague and broader than accepted legal practice in civil and administrative litigation. All material included in the record is required to be in the list of exhibits. Some documents are already in the district's possession. Would increase district's cost for IHO fees to submit record. IHOs would likely not be compensated for work related to the record.

DEPARTMENT RESPONSE:

Further ensures record includes all information considered by IHO in rendering decision to ensure accurate, complete record should decision be appealed. Definition not vague/ambiguous. IHOs entitled to compensation for pre-hearing, hearing, post-hearing activities.

Section 200.5(j)(6) - Withdrawals of requests for hearings

COMMENT:

Should preclude complaint filings without merit; may limit "judge shopping".

DEPARTMENT RESPONSE:

Comments supportive.

COMMENT:

Requires analysis of request to determine complaint basis by those who may not know how to do this. Errors, delays likely.

DEPARTMENT RESPONSE:

Staff may consult with district special education personnel for clarity.

COMMENT:

Clarify "Order of termination".

DEPARTMENT RESPONSE:

Means written order that notifies parties the hearing has ended because party withdrew request; indicates whether the termination is with or without prejudice and the reasons therefor.

COMMENT:

Add that party must have a reasonable opportunity to respond to notice of withdrawal prior to IHO issuance of termination order. Add timeline for order and parties' response.

DEPARTMENT RESPONSE:

IHOs must timely act while still providing the parties with reasonable opportunity to be heard.

COMMENT:

Clarify withdrawal v. termination. Add termination of hearing, once commenced, would preclude party from filing another complaint on same or similar claims.

DEPARTMENT RESPONSE:

Party would not be precluded from filing another complaint on same or similar claims, unless IHO ordered termination with prejudice.

COMMENT:

Clarify why written order of termination needed.

DEPARTMENT RESPONSE:

To ensure parties are properly informed that hearing has ended and conditions of withdrawal, if any.

COMMENT:

Require NYC to compensate IHOs for issuing termination orders.

DEPARTMENT RESPONSE:

Written orders are included in activities for which IHO must be compensated.

COMMENT:

Process favors districts.

DEPARTMENT RESPONSE:

Does not favor one party over the other; provides safeguards against IHO shopping; ensures statewide consistency; provides clear authority to ensure that interests of the parties are not prejudiced by withdrawal.

COMMENT:

Revise; allow petitioner to continue hearing as alternative to withdrawal with prejudice.

DEPARTMENT RESPONSE:

Party who was withdrawing the case could decide to proceed with hearing with currently appointed IHO.

COMMENT:

Clarify 'commencement of hearing'.

DEPARTMENT RESPONSE:

First date hearing is held, excluding prehearing conference if conducted.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sanitary Condition of Shellfish Lands

I.D. No. ENV-47-13-00002-A

Filing No. 28

Filing Date: 2014-01-14

Effective Date: 2014-01-29

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

Action taken: Amendment of Part 41 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0307 and 13-0319

Subject: Sanitary Condition of Shellfish Lands.

Purpose: To adopt regulations classifying underwater lands to prohibit the harvest of shellfish.

Text or summary was published in the November 20, 2013 issue of the Register, I.D. No. ENV-47-13-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: Gina M. Fanelli, NYSDEC- Marine Resources, 205 N. Belle Mead Rd., East Setauket, NY 11733, (631) 444-0482, email: gmfanell@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the Department.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Summary: Commissioner Martens received a letter on December 2, 2013 regarding this amendment to 6 NYCRR Part 41, Sanitary Conditions of Shellfish Lands. The author expressed his concern that the amendments were made because of a budget crisis within the Department. His concern is that the Department should not be allowing a shrinking budget to negatively impact the shellfishing industry and the overall economic health of NYS.

Analysis: Recent bacteriological surveys of portions of shellfish growing areas in the towns of Hempstead, Brookhaven, Islip, Smithtown, Huntington, Southampton, Southold and East Hampton show increased levels of coliform bacteria and a corresponding increased potential to cause illness if shellfish from these areas are eaten. Areas that do not meet the bacteriological criteria for certified shellfish lands must be closed. There is no direct cost to the department. The changes were not made because of budget concerns.

Alternatives suggested: No relevant alternatives were suggested.

Changes made to rule: None.

Office of Mental Health

NOTICE OF ADOPTION

Repeal of 14 NYCRR Parts 10, 51, 71 and 103

I.D. No. OMH-45-13-00003-A

Filing No. 27

Filing Date: 2014-01-14

Effective Date: 2014-01-29

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

Action taken: Repeal of Parts 10, 51, 71 and 103 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 7.09

Subject: Repeal of 14 NYCRR Parts 10, 51, 71 and 103.

Purpose: To repeal several outdated regulations.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. OMH-45-13-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Repeal of 14 NYCRR Parts 10, 51, 71 and 103

I.D. No. PDD-45-13-00019-A

Filing No. 36

Filing Date: 2014-01-14

Effective Date: 2014-01-29

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

Action taken: Repeal of Parts 10, 51, 71 and 103 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 13.09(b)

Subject: Repeal of 14 NYCRR Parts 10, 51, 71 and 103.

Purpose: To repeal several outdated regulations.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. PDD-45-13-00019-P.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

National Fuel Gas Corporation's Conservation Incentive Programs

I.D. No. PSC-04-14-00005-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 whether to adopt, modify, or reject, in whole or in part, or take other action regarding a December 18, 2013 petition filed by National Fuel Gas Corporation to modify its Non-Residential Conservation Incentive Program.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: National Fuel Gas Corporation's Conservation Incentive Programs.

Purpose: To modify National Fuel Gas Corporation's Non-Residential Conservation Incentive Program.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a proposal set forth by National Fuel Gas Distribution Corporation (NFG) in a petition dated December 18, 2013, seeking approval to modify budgets and targets for its Non-Residential Conservation Incentive Program (NRCIP).

Specifically, NFG seeks to reduce its total NRCIP budget by approximately $4 million over the 2012 to 2015 period. The total proposed budget is $3,574,726 ($980,771 annually for 2012 and 2013 and $806,592 annually for 2014 and 2015). NFG also seeks a corresponding reduction to its NRCIP targets by 471,436 gross dekatherms, or 117,859 dekatherms per year. The total proposed target for 2012 to 2015 is 146,560 gross dekatherms, or 36,640 dekatherms per year. Finally, NFG proposes to reflect the reduced budget in the CIP component of its monthly delivery adjustment charge and requests an effective date of January 1, 2014 for the proposed changes.

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, Department of Public Service, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Department of Public Service, 3 Empire State Plaza, Albany, NY 12223, (518) 474-4535, email: kathleen.burgess@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.

(07-M-0548SP79)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether Hamilton Should be Permitted to Construct and Operate a Municipal Gas Utility

I.D. No. PSC-04-14-00006-P

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

Proposed Action: The Public Service Commission is considering whether to grant, modify or deny, in whole or in part, the petition of Village of Hamilton Municipal Utilities Commission (Hamilton) to construction and operate a municipal gas distribution system.

Statutory authority: Public Service Law, sections 68 and 65

Subject: Whether Hamilton should be permitted to construct and operate a municipal gas utility.

Purpose: To decide whether to approve Hamilton's request to construct and operate a municipal gas utility.

Substance of proposed rule: The Commission is considering whether to approve, modify, or reject, in whole or in part, the petition made by the Village of Hamilton Municipal Utilities Commission (Hamilton) seeking approval to construct and operate a municipal gas distribution Company under section 68 of the Public Service Law (PSL). The gas distribution system's footprint lies in the Village of Hamilton, Town of Eaton, Town of Madison, and Town of Hamilton, Madison County, New York. The petition also requests a waiver, at least for the first five years, of part 230 of the Commissions' Regulations regarding extensions of mains and services.

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) 474-4535, email: secretary@dps.ny.gov

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

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

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

(13-G-0584SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Economic Development Assistance to Qualified Businesses

I.D. No. PSC-04-14-00007-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, proposed modifications to electric Economic Development Programs filed by Niagara Mohawk Power Corporation d/b/a National Grid.

Statutory authority: Public Service Law, sections 4, 5 and 66

Subject: Economic development assistance to qualified businesses.

Purpose: Revisions to National Grid's Economic Development Programs.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, modify or reject a petition filed by Niagara Mohawk Power Corporation d/b/a/ National Grid requesting approval of modifications to its electric Economic Development Programs. The modifications propose to increase the grant limits for three existing electric Economic Development Programs. The Commission may adopt, reject or modify the petition and address any related matters.

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.

(12-E-0201SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of PSC Regulations, 16 NYCRR, Sections 86.3(a)(1), (2), (b)(2) and 86.6(c)

I.D. No. PSC-04-14-00008-P

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

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

Statutory authority: Public Service Law, sections 4 and 122

Subject: Waiver of PSC regulations, 16 NYCRR, Sections 86.3(a)(1), (2), (b)(2) and 86.6(c).

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

Substance of proposed rule: The Commission is considering a motion by Cricket Valley Energy Center, LLC for a waiver or partial waiver of certain requirements for the content of an application for authority to construct and operate an electric transmission line pursuant to a Certificate of Environmental Compatibility and Public Need under Public Service Law Article VII.

Cricket Valley Energy Center, LLC seeks authority to construct and operate a new, approximately 14.6-mile, 345 kV transmission line to connect the planned Cricket Valley Energy Center generation facility in the Town of Dover, New York to the Consolidated Edison Company of New York, Inc.'s (Con Edison) Pleasant Valley Substation in the Town of Pleasant Valley, New York (the Transmission Line); and the re-conductor of an approximately 3.4-mile segment of the existing 345 kV Line 398 in the Town of Dover between the Cricket Valley Switchyard and the New York – Connecticut state line (the Re-conductoring Segment; collectively, the Project). Cricket Valley Energy Center, LLC specifically seeks waivers of 16 NYCRR Sections 86.3(a)(1), 86.3(a)(2), 86.3(b)(2), and 86.6(c), relating to maps, aerial photographs, and design drawings. The Commission may grant, deny or modify the relief requested or adopt an alternate resolution proposed in responses to the motion or otherwise related to the motion.

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, NY 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, NY 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-T-0585SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Economic Development Assistance to Qualified Businesses

I.D. No. PSC-04-14-00009-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, proposed modifications to gas Economic Development Programs filed by Niagara Mohawk Power Corporation d/b/a National Grid.

Statutory authority: Public Service Law, sections 4, 5 and 66

Subject: Economic development assistance to qualified businesses.

Purpose: Revisions to National Grid's Economic Development Programs.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, modify or reject a petition filed by Niagara Mohawk Power Corporation d/b/a/ National Grid requesting approval of modifications made to its gas Economic Development Program. The modifications propose adding a service class and allowing customer reimbursement of costs associated with analysis necessary for feasibility studies and cost effectiveness. The Commission may adopt, reject or modify the petition and address any related matters.

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.

(12-G-0202SP3)

Workers' Compensation Board

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Conform Regulations to 12 NYCRR Section 300.22

I.D. No. WCB-04-14-00002-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 rulemaking to amend sections 300.22, 300.26, 300.29, 300.33, 300.37, 312.2, 312.5, 327.3 and 403.1 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 124 and 25

Subject: Conform regulations to 12 NYCRR section 300.22.

Purpose: Provide for electronic filing of certain reports and notices.

Substance of proposed rule (Full text is posted at the following State website:wcb.ny.gov): The proposed regulation amends 12 NYCRR sections 300.22, 300.26, 300.29, 300.33, 300.37, 312.2, 312.5, 327.3 and 403.1 to conform existing regulations to the newly adopted section 300.22 of Title 12 of the NYCRR. Section 300.22 of Title 12 of NYCRR streamlines the process for notice and reporting by insurance carriers and self-insured employers.

Subparagraph (4) of subdivision (f) of section 300.22 of Title 12 of the NYCRR is amended to add subparagraph (3) to the list. Subparagraph (3) was inadvertently omitted from subparagraph (4) of subdivision (f) of section 300.22 of Title 12 of the NYCRR, when that regulation was adopted.

Section 300.26 of Title 12 of the NYCRR is amended to add the required filing of a subsequent report of injury for all payments.

Section 300.29 of Title 12 of the NYCRR is amended to remove the reference to the C-8/8.6 and replace it with a subsequent report of injury.

Subdivision (b) of section 300.33 of Title 12 of the NYCRR, is amended change the term "filed" to "submitted."

Subdivision (d) of section 300.33 of Title 12 of the NYCRR, is amended to add "statement" after "pre-hearing conference."

Subparagraph (1) of subdivision (f) of section 300.33 of Title 12 of the NYCRR, is amended to add notices to the information that may need to be supplied to the Board in addition to forms.

Subparagraph (4) of subdivision (f) of section 300.33 of Title 12 of the NYCRR, is amended to replace "C-2" with "first" report of injury and add carrier to those who file a first report of injury in addition to the employer.

Section 300.37 of Title 12 of the NYCRR is amended to add notice to the references to documents and forms, to replace the word "file" with "submit," and to provide that such notices shall be in the format prescribed by the chair.

Section 312.2 of Title 12 of the NYCRR is amended to correct a misspelling and remove reference to the C-7.

Subdivision (h) of section 312.5 of Title 12 of the NYCRR is amended to replace the reference to filing a C-8/8.6 with a requirement to submit a report of payments.

Section 327.3 of Title 12 of the NYCRR is amended to replace reference to specific form names with references to the types of reports submitted, to remove reference to reports filed after 1994, to include email contact information, and to add a reference to 325-1.25.

Section 403.1 of Title 12 of the NYCRR is amended to remove references to filing specific forms and replace with requirements to submit a notice of initial action.

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 328 State Street, Schenectady, New York 12305-2318, (518) 486-9564, email: regulations@wcb.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 proposed amendments to these regulations conform the regulations to the new electronic filing standard established in newly adopted 12 NYCRR 300.22. The proposed amendments provide for submission of reports and notices in electronic format prescribed by the Chair of the Workers' Compensation Board rather than by submission of a named form. They also make one correction in 300.22 to incorporate a reference to a subparagraph from a list that was erroneously omitted in the adopted version. The proposed changes are ministerial. They do not change the meaning or function of any of the amended regulations. It is believed that there is no basis for objecting to the proposed amendments.

Job Impact Statement

The proposed regulation (4) of subdivision (f) of section 300.22 of Title 12 of the NYCRR amendments will not have an adverse impact on jobs. These amendments simply conform existing regulations to the newly adopted section 300.22 of Title 12 of the NYCRR. Section 300.22 of Title 12 of NYCRR streamlines the process for notice and reporting by insurance carriers and self-insured employers. The requirements to provide the notices and reports already exist under the Workers' Compensation Law. These amendments will have no impact on jobs.