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

Firewood (all Hardwood Species), Nursery Stock, Logs, Green Lumber, Stumps, Roots, Branches and Debris of Half an Inch or More

I.D. No. AAM-10-14-00001-E
Filing No. 420
Filing Date: 2014-05-19
Effective Date: 2014-05-19

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

Action taken: Amendment of Part 139 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: The Asian Long Horned Beetle, Anoplophora glabripennis, an insect species non-indigenous to the United States, was first detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities detected infestations of this pest in other areas of Brooklyn as well as in and about Amityville, Queens, Manhattan and Staten Island. As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The quarantine was later lifted in Islip, due to the eradication of the beetle in this area. The boundaries of those areas currently under quarantine are described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to extend the existing quarantine area on Long Island to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington. This rule contains the needed modification.

The Asian Long Horned Beetle (ALB) is a destructive wood-boring insect native to China, Japan, Korea and the Isle of Hainan. It can cause serious damage to healthy trees by boring into their heartwood and eventually killing them. The adult Asian Long Horned Beetle has a large body (1 to 1.5 inches in length) with very long antenna (1.3-2.5 times their body length). Its body is black with white spots and its antenna are black and white. Adult beetles emerge during the spring and summer months from large (1/2 inch in diameter) round holes anywhere on infested trees, including branches, trunks and exposed roots. They fly for two or three days, during which they feed and mate. To lay eggs, adult females chew depressions in the bark of host trees to lay eggs. One female can lay 35 to 90 eggs. The larvae bore into and feed on the interior of the trees, where they over-winter. The accumulation of coarse sawdust around the base of the infested tree where branches meet the main stem and where branches meet other branches, is evidence of the presence of the borer. One generation is produced each year. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Host hardwood materials at risk to attack and infestation include species of the following: Acer (Maple); Aesculus (Horse Chestnut), Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); Ulmus (Elm); Celtis (Hackberry), Fraxinus (Ash), Cercidiphyllum japonicum (Katsura); Platanus (Plane tree, Sycamore); and Sorbus (Mountain Ash).

Since the Asian Long Horned Beetle is not considered established in the United States, the risk of moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to the hardwood forests and street, yard, park and fruit trees of the State. Approximately 858 million susceptible trees above 5 inches in diameter involving 62 percent (18.6 million acres) of the State's forested land are at risk.

Control of the Asian Long Horned Beetle is accomplished by the removal of infested host trees and materials and then chipping or burning them. To date, 18,530 infested trees have been removed. Chemical treatments are also used to suppress ALB populations with approximately 544,000 treatments administered. However, the size of the area infested and declining fiscal resources cannot mitigate the risk from the movement of regulated articles outside of the area under quarantine. As a result, the quarantine imposed by this rule has been determined to be the most effective means of preventing the further spread of the Asian Long Horned Beetle. This will help ensure that as control measures are undertaken in the areas the Asian Long Horned Beetle currently infests, the infestation does not spread beyond those areas via the movement of infested trees and materials.

Based on the facts and circumstances set forth above the Department has determined that the immediate readoption of this emergency rule 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. The specific reason for this finding is that the failure to continue the modification of the quarantine area and restrict the movement of trees and materials from the areas of the State infested with Asian Long Horned Beetle could result in the spread of the pest beyond those areas and damage to the natural resources of the State and could result in a federal quarantine and quarantines by other states and foreign countries affecting the entire State. This would cause economic hardship to the nursery and forest products industries of the State. The consequent loss of business would harm industries which are important to New York State's economy and as such would harm the general welfare. Given the potential for the spread of the Asian Long Horned Beetle beyond the areas currently infested and the detrimental consequences that would have, the rule modifying the quarantine area should be

continued on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment, pending adoption of the proposed permanent rulemaking.

Subject: Firewood (all hardwood species), nursery stock, logs, green lumber, stumps, roots, branches and debris of half an inch or more.

Purpose: To modify the Asian Long Horned Beetle quarantine to prevent the further spread of the beetle to other areas.

Text of emergency rule: Subdivision (b) of section 139.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed, and a new subdivision (b) is added to read as follows:

(b) That area in the Villages of Amityville, West Amityville, North Amityville, Babylon, West Babylon, Copiague, Lindenhurst, North Lindenhurst,East Farmingdale, Farmingdale, Bethpage, Old Bethpage, Melville, Massapequa, Massapequa Park, East Massapequa, Wyandanch and Wheatley Heights; in the Towns of Babylon, Oyster Bay and Huntington; in the Counties of Nassau and Suffolk and bounded by a line beginning at a point where West Main Street intersects the west shoreline of Carll's River, then west along West Main Street to its intersection with Route 109, then northwest along Route 109 to its junction with Little East Neck Road, continuing northwest along Little East Neck Road to its junction with Belmont Avenue, then north along Belmont Avenue to its intersection with Essex Street, then west and north on Essex Street to its junction with Mount Avenue, then northwest along Mount Avenue to its intersection with Straight Path, then northeast along Straight Path to its intersection with S. 18th Street, then north along S. 18th Street to the point it becomes N. 18th Street, then north along N. 18th Street to its intersection with Lee Avenue, then west along Lee Avenue to its intersection with Conklin Avenue, then north along Conklin Avenue to the point it becomes Bagatelle Road, then north along Bagatelle Road to its intersection with the south service road of the Long Island Expressway, following the south service road of the Long Island Expressway west to its intersection with Round Swamp Road, then south on Round Swamp Road to its junction with Bethpage Road, then crossing Bethpage Road and continuing southwest on Thomas Powell Blvd to its intersection with Merritt('s)Road, continuing south on Merritt('s) Road to its intersection with (Route 24) Hempstead Turnpike, then west along Hempstead Turnpike to its intersection with Hemlock Drive, then south along Hemlock Drive to its intersection with Cheryl Lane North, then east and south along Cheryl Lane North to its intersection with Boundary Avenue, then east on Boundary Avenue to its intersection with North Broadway, then south on North Broadway and Broadway to its junction with Hicksville Road then south along Hicksville Road to the point it becomes Division Avenue continuing south along Division Avenue to its intersection with South Oyster Bay, then east along the shoreline to Carll's River, then north along the west shoreline of Carll's River to the point of beginning.

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-10-14-00001-EP, Issue of March 12, 2014. The emergency rule will expire July 17, 2014.

Text of rule and any required statements and analyses may be obtained from: Christopher A. Logue, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-2087

Regulatory Impact Statement

1. Statutory authority:

Section 18 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 as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the further spread within the State of an injurious insect, the Asian Long Horned Beetle.

3. Needs and benefits:

The Asian Long Horned Beetle, Anoplophora glabripennis, an insect species non-indigenous to the United States was detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities delineated other locations in Brooklyn as well as locations in and about Amityville, Queens, Manhattan and Staten Island.

As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The quarantine was later lifted in Islip, due to the eradication of the beetle in this area. The boundaries of those areas currently under quarantine are described in 1 NYCRR section 139.2. On July 8, 2013, a homeowner in North Lindenhurst found an Asian Long Horned Beetle on her property. This prompted a survey of neighboring areas. As of December 1, 2013, 244 infested trees have been identified in a 50.7 square mile area. These observations of the beetle and the infested trees have resulted in the need to extend the existing quarantine area on Long Island to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington. This rule contains the needed modification.

The Asian Long Horned Beetle is a destructive wood-boring insect native to China, Japan, Korea and the Isle of Hainan. It can cause serious damage to healthy trees by boring into their heartwood and eventually killing them. The adult Asian Long Horned Beetle has a large body (1 to 1.5 inches in length) with very long antenna (1.3-2.5 times their body length). Its body is black with white spots and its antenna are black and white. Adult beetles emerge during the spring and summer months from large (1/2 inch in diameter) round holes anywhere on infested trees, including branches, trunks and exposed roots. They fly for two or three days, during which they feed and mate. To lay eggs, adult females chew depressions in the bark of host trees to lay eggs. One female can lay 35 to 90 eggs. The larvae bore into and feed on the interior of the trees, where they over-winter. The accumulation of coarse sawdust around the base of the infested tree where branches meet the main stem and where branches meet other branches, is evidence of the presence of the borer. One generation is produced each year. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Host hardwood materials at risk to attack and infestation include species of the following: Acer (Maple); Aesculus (Horse Chestnut), Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); Ulmus (Elm); Celtis (Hackberry), Fraxinus (Ash); Cercidiphyllum japonicum (Katsura); Platanus (Plane tree, Sycamore) and Sorbus (Mountain Ash).

Since the Asian Long Horned Beetle is not considered established in the United States, the risk of moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to the hardwood forests and street, yard, park and fruit trees of the State. Approximately 858 million susceptible trees above 5 inches in diameter involving 62 percent (18.6 million acres) of the State's forested land are at risk.

Control of the Asian Long Horned Beetle is accomplished by the removal of infested host trees and materials and then chipping or burning them. To date, 18,530 infested trees have been removed. Chemical treatments are also used to suppress ALB populations with approximately 544,000 treatments administered. However, the size of the area infested and declining fiscal resources cannot mitigate the risk from the movement of regulated articles outside of the area under quarantine. Additionally, a heavily traveled highway passes through the new quarantine area and poses the potential for movement of live beetles and infested wood to other areas in New York State. As a result, the extension of the quarantine imposed by this rule has been determined to be the most effective means of preventing the further spread of the Asian Long Horned Beetle. This will help ensure that as control measures are undertaken in the areas the Asian Long Horned Beetle currently infests, the infestation does not spread beyond those areas via the movement of infested trees and materials.

The effective control of the Asian Long Horned Beetle within the limited areas of the State where this insect has been found is also important to protect New York's nursery and forest products industry. The failure of states to control insect pests within their borders can lead to federal quarantines that affect all areas of those states, rather than just the infested portions. Such a widespread federal quarantine would adversely affect the nursery and forest products industry throughout New York State.

4. Costs:

(a) Costs to the State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties:

The extension of the quarantine to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley and Huntington would affect approximately 94 nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area.

Nurseries exporting host material from the quarantine area established by this rule, other than pursuant to compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of $25 per hour. Most inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year with a total annual cost of less than $1,000.

Most shipments will be made pursuant to compliance agreements for which there is no charge.

Tree removal services will have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantine area established by this rule may not move outside that area due to the fact that it is not practical at this time to determine for certification purposes that the material is free from infestations.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation:

None. The United States Department of Agriculture is dedicating 8.5-million dollars in funding to conduct surveys and remove infested trees.

(ii) It is anticipated that the Department will be able to administer the quarantine with existing staff.

5. Local government mandate:

Yard waste, storm clean-up and normal tree maintenance activities involving twigs and/or branches of ½" or more in diameter of host species will require proper handling and disposal, i.e., chipping and/or incineration if such materials are to leave the quarantine area established by this rule. An effort continues to identify centralized disposal sites that would accept such waste from cities, villages and other municipalities at no additional cost.

6. Paperwork:

Regulated articles inspected and certified to be free of Asian Long Horned Beetle moving from the quarantine area established by this rule will have to be accompanied by a state or federal phytosanitary certificate and a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The only alternative considered was to not extend the quarantine. This alternative was rejected. The failure of the State to extend the existing quarantine to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington where the Asian Long Horned Beetle and infested trees have been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of Asian Long Horned Beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the modification of quarantine proposed in this rulemaking.

9. Federal standards:

The amendment does not exceed any minimum standards for the same or similar subject areas. The United States Department of Agriculture will implement a parallel federal quarantine once New York State establishes its quarantine.

10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business:

The small businesses affected by extending the quarantine to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington are the nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area. There are approximately 94 such businesses within that area.

Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the proposed quarantine area, in the event that they do, they would be subject to the same quarantine requirements as other regulated parties.

2. Compliance requirements:

All regulated parties in the new quarantine area established by the rule will be required to obtain certificates and limited permits in order to ship regulated articles from those areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

3. Professional services:

In order to comply with the rule, small businesses and local governments shipping regulated articles from the new quarantine area will require professional inspection services, which would be provided by the Department and the United States Department of Agriculture (USDA).

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None.

(b) Annual cost for continuing compliance with the proposed rule:

Nurseries exporting host material from the new quarantine area on Long Island, other than pursuant to a compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of $25 per hour. Most such inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year, with a total cost of less than $1,000. Most shipments would be made pursuant to compliance agreements for which there is no charge.

Tree removal services will have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the new quarantine areas may not move outside those areas due to the fact that it is not practical at this time to determine for certifications purposes that the material is free from infestation.

Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the proposed quarantine area, in the event that they do, they would be subject to the same costs as other regulated parties.

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments. This is done by limiting the new quarantine area to only those parts of Long Island where the Asian Long Horned Beetle and infested trees have been detected; and by limiting the inspection and permit requirements to only those necessary to detect the presence of the Asian Long Horned Beetle and prevent its movement in host materials from the quarantine area. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

The Department has had ongoing discussions with representatives of municipalities and various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of Asian Long Horned Beetle quarantines and the specific needs and benefits of this quarantine. The Department has also had extensive consultation with the USDA on the efficacy of such quarantines.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping host materials from the new quarantine area, other than pursuant to a compliance agreement, will require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, will be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The rule extends the Asian Long Horned Beetle quarantine to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington.

The extension of the quarantine will affect approximately 94 regulated parties, all of whom are in rural areas.

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

All regulated parties in the new quarantine area established by the rule will be required to obtain certificates and limited permits in order to ship regulated articles from those areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

In order to comply with the rule, regulated parties in rural areas shipping regulated articles from the new quarantine area will require professional inspection services, which would be provided by the Department and the United States Department of Agriculture (USDA).

3. Costs:

Nurseries exporting host material from the new quarantine area, other than pursuant to a compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of $25 per hour. Most such inspections will take one

hour or less. It is anticipated that there would be 25 or fewer such inspections each year, with a total cost of less than $1,000. Most shipments would be made pursuant to compliance agreements for which there is no charge.

Tree removal services will have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the new quarantine area may not move outside those areas due to the fact that it is not practical at this time to determine for certifications purposes that the material is free from infestation.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the regulations were drafted to minimize adverse economic impact on all regulated parties, including those in rural areas. This is done by limiting the new quarantine area to only those parts of Long Island where the Asian Long Horned Beetle and infested trees have been detected; and by limiting the inspection and permit requirements to only those necessary to detect the presence of the Asian Long Horned Beetle and prevent its movement in host materials from the quarantine area. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact in rural areas as much as is currently possible.

5. Rural area participation:

The Department has had ongoing discussions with representatives of municipalities and various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of Asian Long Horned Beetle quarantines and the specific needs and benefits of this quarantine. The Department has also had extensive consultation with the USDA on the efficacy of such quarantines.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The extension of the existing quarantine area to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington is designed to prevent the further spread of the Asian Long Horned Beetle to other parts of the State. A spread of the infestation would have very adverse economic consequences to the nursery, forestry, fruit and maple product industries of the State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government, other states and foreign countries. By helping to prevent the spread of the Asian long horned beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's nursery, forestry, fruit and maple product industries.

Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than $2 billion.

As set forth in the regulatory impact statement, the cost of the rule to regulated parties is relatively small and as such, the rule should not have a substantial adverse impact on jobs and employment opportunities.

Assessment of Public Comment

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Cattle Importation

I.D. No. AAM-22-14-00007-P

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

Proposed Action: This is a consensus rule making to amend Part 53 of Title 1 NYCRR.

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

Subject: Cattle importation.

Purpose: To ease burden of interstate shipment of young calves and conform with federal animal disease traceability requirements.

Public hearing(s) will be held at: 1:00 p.m., July 24, 2014 at Department of Agriculture and Markets, 10B Airline Drive, Albany, NY.

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

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

Text of proposed rule: Subdivision (a) and (b) of section 53.1 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York (1NYCRR) is amended to read as follows:

(a) Accredited veterinarian means a veterinarian duly approved by the [Deputy] Administrator of [Veterinary Services,] *the* Animal and Plant Health Inspection Service *(APHIS)*, United States Department of Agriculture and accredited to perform functions of Federal and cooperative State-Federal programs *on food and fiber animal species; all other livestock species; and zoo animals that can transmit exotic animal diseases to livestock (category II animals)*.

(b) [Approved] *Interstate* certificate of veterinary inspection *(ICVI)* means [a] *an official* document [which:] *issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement*.

Paragraphs (1)-(5) of subdivision (b) of section 53.1 are repealed, and new paragraphs (1)-(5) are added to read as follows:

(1) The ICVI must show the species of animals covered by the ICVI; the number of animals covered by the ICVI; the purpose for which the animals are to be moved; the address at which the animals were loaded for interstate movement; the address to which the animals are destined; and the names of the consignor and the consignee and their addresses if different from the address at which the animals were loaded or the address to which the animals are destined. Additionally the ICVI must list the official eartag number of each animal. An ICVI may not be issued for any animal that is not officially identified with an official eartag.

(2) As an alternative to typing or writing individual animal identification on an ICVI, if agreed to by the Department, another document may be used to provide this information, but only under the following conditions:

(i) The document must be a State form or APHIS form that requires individual identification of animals or a printout of official identification numbers generated by computer or other means;

(ii) A legible copy of the document must be stapled to the original and each copy of the ICVI;

(3) Each copy of the document must identify each animal to be moved with the ICVI, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(4) The following information must be written in ink in the identification column on the original and each copy of the ICVI and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the document; and

(ii) Either the unique serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

(5) The ICVI shall be valid for 30 days following the date of inspection of the animal identified on the document.

Section 53.1 of 1NYCRR is amended by repealing paragraphs (l) and (w), re-lettering paragraphs (m)-(v) to read (n)-(w), adding new paragraphs (l) and (m), and paragraph (q) is amended as follows:

(l) Official eartag means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2015, all official eartags applied to animals must bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

(m) Owner-shipper statement means a statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of animals covered by the statement; the species of animal covered; the name and address of the owner at the time of the movement; the name and address of the shipper; and the identification of each animal, as required by the regulations.

(q) Shipping copy means the copy of an [approved] *interstate* certificate of veterinary inspection which accompanies imported cattle at the time of entry into this State.

Subdivision (b) and (c) of section 53.2. are amended to read as follows:

(b) Documentation.

(1) No person shall import or move cattle into this State unless the shipping copy of the [approved] *interstate* certificate of veterinary inspection or [waybill] *an owner-shipper statement* as required by this Part is in his or her possession at the time of entry and a copy of [such documents]

any required interstate certificate of veterinary inspection has been [mailed] sent to [the department by] the department of agriculture of the state or country of origin or by the U.S.D.A *to be forwarded to the Department*.

(2) No consignee shall accept a shipment of cattle unless they are accompanied by the shipping copy of the [approved] *interstate* certificate of veterinary inspection or [waybill] *owner shipper statement* as required by this Part. The consignee shall retain the documents for at least [four] *five* years and make them available for examination upon the request of any representative of the department or the U.S.D.A.

(c) Persons importing or moving cattle into the State shall transport them from the point of entry to the destination named in the [approved] *interstate* certificate of veterinary inspection or [waybill] *owner-shipper statement* by the most direct practical route and shall not unload them at any other premises, unless otherwise directed by an authorized representative of the commissioner.

Section 53.3, subdivisions (a), (c) and (e) and paragraphs (3)-(6) of subdivision (e) of section 53.3 of 1NYCRR are amended to read as follows:

Section 53.3. Importation of cattle to a specifically approved stockyard or a recognized slaughtering establishment

Notwithstanding any other provision of this Part, cattle may be imported into the State and moved directly to a specifically approved stockyard, as defined in section 53.1(r) of this Part, or to a recognized slaughtering establishment, as defined in section 53.1(o) of this Part, without [a] *an interstate* certificate of veterinary inspection under the following conditions:

(a) The cattle shall be accompanied by [a waybill] *an owner-shipper statement*.

(c) The cattle shall be moved directly to the specifically approved stockyard or recognized slaughtering establishment named as the destination or consignee on the [waybill] *owner-shipper statement*. Cattle which are not subsequently qualified under subdivision (e) of this Section shall be sold only to a recognized slaughtering establishment and after the sale moved by the most direct route to the slaughtering establishment.

(e) Cattle moved to a specifically approved stockyard may be moved without restriction following, as provided herein, segregation, examination by an accredited veterinarian and the preparation of an [approved] *interstate* certificate of veterinary inspection; provided that the following conditions are met:

(3) the federally assigned premises identification numbers of all premises of origin of the cattle shall be included on the [entry waybill] *owner-shipper statement*, with the premises of origin being the farm or ranch in the bordering state or zone where the animals originated and not a livestock market or dealer;

(4) the cattle shall enter the State with individual, uniquely numbered eartags approved for identification by the USDA and the eartag numbers shall be included on the [entry waybill] *owner-shipper statement*;

(5) prior to the required veterinary inspection and the preparation of an [approved] *interstate* certificate of veterinary inspection, cattle that enter under this Section shall always be segregated at least 30 feet from cattle that originated in New York State and from cattle that entered the State with [a] *an interstate* certificate of veterinary inspection;

(6) prior to the release from segregation pens, an accredited veterinarian shall physically examine all animals in the pen and shall prepare an [approved] *interstate* certificate of veterinary inspection for those animals not going to immediate slaughter. If any animal shows signs of infectious, contagious or communicable disease that animal, and all animals exposed to that animal shall be quarantined and directed to an approved slaughtering establishment for immediate slaughter, or at the discretion of the Commissioner, may be returned to the place of origin or be quarantined in isolation from all other animals at the owner's expense until the Commissioner determines that the animals are not a threat to New York livestock.

Subdivisions (a) and (e) of section 53.4 are amended to read as follows:

(a) The cattle must be accompanied by the shipping copy of an [approved] *interstate* certificate of veterinary inspection.

(e) The person designated by the department shall keep records for a minimum of [four] *five* years which individually identify the imported cattle, any cattle exposed to them, their source and disposition. The records shall be made available for examination upon the request of a representative of the department or the U.S.D.A.

Subdivisions (a) and (b) of section 53.5 of 1NYCRR is re-lettered subdivisions (b) and (c); a new subdivision (a) of section 53.5 is added; and subparagraph (ii) of paragraph (3) of subdivision and (c) and subparagraph (iii) of paragraph (4) of subdivision (c) of section 53.5 is amended to read as follows:

(a) Calves less than 14 days of age or 200 pounds moved directly from states with an agreement with this State may enter the State provided that:

(1) The calves are identified prior to movement with an official eartag; and

(2) The calves are moved with an owner-shipper statement; and

(3) The consignee retains the owner-shipper statements for five years and make them available for examination upon the request of any representative of the department or the U.S.D.A.

(b) [The] *All other* cattle shall be accompanied by the shipping copy of the [approved] *interstate* certificate of veterinary inspection.

(c) Brucellosis test.

(ii) they are quarantined and isolated from other cattle at the destination identified in the [approved] *interstate* certificate of veterinary inspection until classified negative by a U.S.D.A approved brucellosis test conducted at the consignee's expense between 45 and 120 days after importation.

(4) Cattle originating in brucellosis class B or C states or cattle originating in brucellosis class free or brucellosis class A states which have been in class B or C states during the previous 12 months may be imported into New York if:

(iii) they are quarantined and isolated from other cattle at the destination identified in the [approved] *interstate* certificate of veterinary inspection until classified negative by a U.S.D.A. approved brucellosis test conducted at the consignee's expense between 45 and 120 days after importation.

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

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

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

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

Consensus Rule Making Determination

This rule is proposed as a consensus rule within the definition of that term in the State Administrative Procedure Act section 102(11) pursuant to the expectation that no person is likely to object to its adoption because it is non-controversial.

Agriculture and Markets Law (AML) § 74 provides for the Commissioner to adopt and implement regulations relating to the importation of domestic animals into the State. The proposed amendments to 1 NYCRR Part 53 would ease the burden of interstate shipment of young calves and makes technical amendments to conform New York regulations to Federal animal disease traceability requirements. The rule would allow young calves to move interstate on an ownership statement, changes definitions and clarifies language consistent with federal regulations.

Part 53 currently outlines New York's requirements governing importation of cattle into the State including definitions, necessary documentation, testing and process.

In March 2013, the new federal traceability rule went into effect requiring identification and certification of all cattle moving interstate with certain exceptions. The new federal regulations impacted anyone moving cattle interstate enforcing specifications on the type of identification and certification needed for those movements. The Department set up guidelines for compliance when the federal rule went into effect which impacted parties have already been complying with.

The proposed amendment to Part 53 would conform New York requirements to the USDA requirements that have been in effect since March 11, 2013. The amendments change the definition of accredited veterinarian to conform with federal regulations. The proposed amendments change the definition and references from "approved certificate of veterinary inspection" to "interstate certificate of veterinary inspection" as defined in federal regulation. The amendments change requirements to mail in copies of interstate certificates of veterinary inspection to allow for more efficient electronic transmission. The Department has already in practice allowed the submission of electronic interstate certificates of veterinary inspection. The definition of official eartag is added to the regulations as prescribed by federal regulation. The definition and references to "waybills" are changed to "owner-shipper statement" as defined in federal regulation. The proposed amendments clarify that most cattle (with certain specified exceptions) should be officially identified prior to entry into the state as required by federal regulation. The proposed amendments change records retention from 4 years to 5 years as required by federal regulation. The amendments allow young calves (less than 200 lbs. or 14 days of age) to move interstate on an owner-shipper statement.

The new federal rule on traceablity requires that all cattle (with few exceptions) have ICVI's to move interstate. The federal rule allows for exceptions under the following circumstances: 9CFR86.5(c)(6)- "Additionally, cattle and bison may be moved between shipping and receiving States or Tribes with documentation other than an ICVI, e.g., a brand inspection certificate, as agreed upon by animal health officials in the shipping and receiving States or Tribes." It has been established practice to move young calves (less than 200 lbs or 14 days of age) without a

veterinary certification. This practice has been adopted to not delay these individuals unnecessarily and to get them to their final destination with the least amount of stress. The Department has worked with the impacted parties, approximately six dealers who specialize in this trade, to solve this problem. The consensus was that the only way to humanely transport and market these animals is to allow movement without a prior veterinary examination and certificate. The requirement of a veterinary examination and certification on a new born calf is superfluous since the calf has had limited exposure to other animals and due to disease incubation time, would not be showing signs of infectious, contagious or communicable disease. The Department is seeking to codify existing practice in order to enter into agreements with neighbor states and thus comply with the federal rule.

The proposed amendments will decrease costs associated with importing young calves and will benefit the New York agricultural community. Since the proposed rule will relieve a regulatory burden upon the livestock industry, and the Department worked with impacted parties, it is expected that no one is likely to object to the proposed amendments. The proposed amendments fulfill the requirement contained in AML governing importation of cattle while decreasing the burden on the agricultural industry as well as the Department. The proposed amendments will have no impact on local governments.

Job Impact Statement

The proposed amendments of 1 NYCRR Part 53 would ease the burden of interstate shipment of young calves and makes technical amendments to conform New York regulations to Federal animal disease traceability requirements. The rule would allow young calves to move interstate on an ownership statement, changes definitions and clarifies language consistent with federal regulations. The rule would not have a substantial adverse impact on jobs and employment activities. This rule will benefit agricultural producers and the local economy by facilitating movement of young calves which is both economically beneficial and humane and codify existing practice in order for New York State to enter into agreements with neighbor states to comply with the federal rule.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Licensing of Hops, Processors and Cideries

I.D. No. AAM-22-14-00003-P

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

Proposed Action: This is a consensus rule making to amend section 276.4 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 214-b, 251-z-4 and 251-z-9

Subject: Licensing of hops, processors and cideries.

Purpose: To exempt small hops processors and cideries from having to pay a license fee or be licensed, respectively.

Text of proposed rule: Subdivisions (e) and (f) of section 276.4 of 1 NYCRR are relettered to be subdivisions (g) and (h), respectively.

Section 276.4 of 1 NYCRR is amended by adding thereto a new subdivision (e), to read as follows:

(e) Processing of hops.

(1) Definitions. As used in this subdivision:

(i) hops means the seed cones of the hop plant, humulus lupulus,

(ii) person means a natural person, partnership, corporation, association, limited liability company or other legal entity.

(iii) processing means that term as defined in Agriculture and Markets Law section 251-z-2(4) except processing, as used in this subdivision, shall not mean non-mechanical drying.

(2) Any person who processes hops in a volume that does not exceed 100,000 lbs. annually shall be exempt from the license fee requirement of Agriculture and Markets Law section 251-z-3, provided that:

(i) such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 261 of this Title; and

(ii) no other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.

Section 276.4 of 1 NYCRR is amended by adding thereto a new subdivision (f) to read as follows:

(f) Cideries.

(1) Definitions. As used in this subdivision:

(i) cidery means a food processing establishment that manufactures hard cider.

(ii) hard cider means the beverage derived only from apples, or from apple concentrate and water, that contains not less than one-half of one percent and not more than seven percent alcohol by volume.

(iii) person means a natural person, partnership, corporation, association, limited liability company or other legal entity

(2) Any person who maintains or operates a cidery shall be exempt from the licensing requirements of article 20-C of the Agriculture and Markets Law, provided that:

(i) such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 261 of this Title; and

(ii) no other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.

Text of proposed rule and any required statements and analyses may be obtained from: Stephen D. Stich, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: Stephen.Stich@agriculture.ny.gov

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

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 276.4 which currently exempts certain entities from having to obtain a food processing license that would otherwise be required. The proposed rule will exempt hops processors who process 100,000 lbs. or less of hops annually from the license fee that would otherwise have to be paid, and will exempt cideries from having to obtain a license entirely.

The proposed rule is non-controversial in that it will remove a regulatory burden upon certain hops processors and upon cideries. The removal of such burden may encourage people to enter those businesses and will improve the economic condition of those who already operate as hops processors or cideries. Agriculture is one of the State's largest industries and has recently been growing, and this rule will contribute to that trend.

The proposed rule will not have an adverse impact upon regulated parties and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact upon employment opportunities.

The proposed rule will exempt hops processors who process 100,000 lbs. of hops or less annually from having to pay the otherwise required food processing establishment license fee, and will exempt cideries from having to obtain such a license entirely. The proposed rule will, by removing a regulatory burden upon such businesses, therefore have no adverse impact upon jobs.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Incorporate by Reference in 1 NYCRR of the 2014 Edition of National Institute of Standards and Technology (''NIST'') Handbook 133

I.D. No. AAM-22-14-00005-P

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

Proposed Action: This is a consensus rule making to amend section 221.11 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: Incorporate by reference in 1 NYCRR of the 2014 edition of National Institute of Standards and Technology (''NIST'') Handbook 133.

Purpose: To incorporate by reference in 1 NYCRR the 2014 edition of NIST Handbook 133.

Text of proposed rule: Section 221.11 of 1 NYCRR is amended to read as follows:

221.11 Test procedures, magnitude of permitted variations.

(a) The test procedures for testing packaged commodities shall be those contained in National Institute of Standards and Technology Handbook 133, [Fourth] *2014* Edition, [issued 2005,] Checking the Net Contents of Packaged Goods, as adopted by the National Conference on Weights and Measures. The document is available from the National Conference on

Weights and Measures, [15245 Shady Grove Road, Rockville, MD 20850] *1135 M Street, Suite 110, Lincoln, NE 68508*, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, 10B Airline Drive, Albany, NY 12235 or in the office of the Department of State, [41 State Street] *One Commerce Plaza, 99 Washington Avenue, Suite 650,* Albany, NY 12231.

(b) The magnitude of variations permitted under section 221.10 of this Part shall be those contained in the procedures and tables of National Institute of Standards and Technology Handbook 133, [Fourth] *2014* Edition, [issued 2005] Checking the Net Contents of Packaged Goods, as adopted by the National Conference on Weights and Measures.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Sikula, Director, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: mike.sikula@agriculture.ny.gov

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 221.11 to incorporate by reference the 2014 edition of National Institute of Standards and Technology Handbook 133 in place of the 2005 edition which is presently incorporated by reference. Handbook 133 contains test procedures that are used by state regulatory officials to determine whether the actual weight of a packaged commodity is sufficiently consistent with the declaration of net weight set forth on its label.

The proposed rule is non-controversial. The 2014 edition of Handbook 133 has been adopted or is in use in the great majority of states; manufacturers of packaged commodities located in New York already, therefore, conform their operations to the provisions of this document in order to sell such commodities in interstate commerce. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in 1 NYCRR section 221.11 the 2014 edition of National Institute of Standards and Technology Handbook 133 (henceforth, "Handbook 133 (2014 edition)") which contains test procedures for weights and measures officials to determine whether the net weight declarations on labels of packaged commodities are accurate. The 2005 edition of Handbook 133 is presently incorporated by reference and Handbook 133 (2014 edition) differs substantively from the 2005 edition only to the extent that the 2014 edition contains amended procedures for assessing the accuracy of the weight declarations of commodities that can gain or lose weight depending upon atmosphere conditions, prohibits the use of wet tare when weighing packages of meat or poultry, provides procedures for determining the net weight of ice glazed products, specifies dimensions of equipment used to test the volume of bark mulch, and provides for minimum densities for polyethylene products such as plastic bags. These substantive changes in Handbook 133 (2014 edition) will help ensure that packaged commodities are uniformly evaluated for net contents.

Handbook 133 (2014) edition has been adopted by or is in use in the great majority of states; manufacturers of packaged commodities located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Implementation of a Program for the Designation of Vital Access Providers

I.D. No. ASA-22-14-00001-E
Filing No. 413
Filing Date: 2014-05-14
Effective Date: 2014-05-14

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

Action taken: Addition of Part 802 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40 and 32.02; L. 2014, ch. 53

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

Chapter 53 of the Laws of 2014, provided for the commissioners of health and mental hygiene to make available funds to certain designated providers of health and behavioral health services which might be endangered due to shifting demographics and changes in health care financing (Medicaid managed care and Affordable Care Act).

The addition of Part 802, effective upon submission to the Department of State for publication is necessary to implement a process for application and review by the Office to designate eligible programs. The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the process for OASAS and its providers to conduct this application process and subsequent distribution of needed funding would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from existing regulations in other agencies for the same program which would differ from OASAS.

OASAS is not able to use the regular rulemaking process established by the State Administrative Procedure Act because there is not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Implementation of a program for the designation of Vital Access providers.

Purpose: To ensure preservation of access to essential services in economically challenged regions of the state.

Text of emergency rule: *PART 802*

VITAL ACCESS PROGRAM and PROVIDERS

802.1 Background and Intent.

The Purpose of this Part is to provide a means to support the stability and geographic distribution of substance use disorder treatment services throughout all geographic and economic regions of the state. A designation of Vital Access Provider denotes the state's determination to ensure patient access to a provider's essential services otherwise jeopardized by the provider's payer mix or geographic isolation. Vital Access Providers in the OASAS system are limited to eligible OASAS certified inpatient rehabilitation facilities, or such other programs as may be designated by the commissioner.

802.2 Legal Base.

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner ("Commissioner") of the Office to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(d) Section 25.09 of the Mental Hygiene Law authorizes the Office to

establish limits on the amount of financial support which may be advanced or reimbursed to a program for the administration of such program.

(e) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(f) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(g) Section 43.02 of the Mental Hygiene Law authorizes the establishment of rates or methods of payment for services at facilities subject to licensure or certification by the Office.

(h) Section 23 of part C of chapter 58 of the laws of 2009, authorizes the commissioner, with the approval of the Commissioner of Health and the Director of the Budget, to promulgate regulations pursuant to Article 32 of the Mental Hygiene Law utilizing the APG methodology described in subdivision (c) of section 841.14 of this Part for the purpose of establishing standards and methods of payments made by government agencies pursuant to title 11 of article 5 of the Social Services Law for chemical dependence outpatient clinic services.

(i) Chapter 53 of the Laws of 2014 authorizes the commissioner to provide special funding to certain designated providers.

802.3 Definitions.

(a) "Vital Access Program" means a program of supplemental state funding and/or temporary rate adjustments available to designated vital access providers pursuant to Part 841 of this Title and the provisions of this Part.

(b) "Vital Access Provider" ("VAP") means an OASAS certified program that is designated by the commissioner as essential but not financially viable because of its service to financially vulnerable populations and/or provision of essential services in an otherwise underserved region.

802.4 Vital Access Program.

(a) Program. The Vital Access Program is a program of ongoing supplement to the non-capital component of service reimbursement rates calculated pursuant to Part 841 of this Title, or exemption from payment reductions, as long as the designation as a vital access provider, as determined pursuant to this section, applies.

(b) Eligibility. The commissioner may grant approval of temporary adjustments to OASAS certified inpatient rehabilitation (IPRs) programs, or such other programs as may be designated by the commissioner, which demonstrate through submission of a written application that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:

(1) protect or enhance access to care;

(2) protect or enhance quality of care;

(3) improve the cost effectiveness of the delivery of health care services; or

(4) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(c) Application. (1) The written application pursuant to subdivision (a) shall be submitted to the commissioner at least sixty (60) days prior to the requested effective date of the temporary rate adjustment and shall include a proposed budget to achieve the goals of the proposal.

(2) The commissioner may require that applications submitted pursuant to this section be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.

(3) In rural communities, federal designation as critical access, essential access, or sole community provider will serve to meet the threshold criteria as a vital access provider.

(d) Conditions on Approval. (1) Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time as determined by the commissioner, of up to three years. At the end of the specified timeframe, the facility shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and Part 841 of this Title.

(2) The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved in conformity with the facility's written application as approved by the commissioner and may also require that the facility submit such periodic reports concerning the achievement of satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the facility's temporary rate adjustment prior to the end of the specified timeframe.

802.5 Severability.

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without the invalid provision or applications, and to this end the provisions of this Part are declared to be severable.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 11, 2014.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner ("Commissioner") of the Office to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(d) Section 25.09 of the Mental Hygiene Law authorizes the Office to establish limits on the amount of financial support which may be advanced or reimbursed to a program for the administration of such program.

(e) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(f) Section 32.02 of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary to ensure quality services to those suffering from problem gambling.

(g) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(h) Section 43.02 of the Mental Hygiene Law authorizes the establishment of rates or methods of payment for services at facilities subject to licensure or certification by the Office.

(i) Chapter 53 of the Laws of 2014 authorized the commissioner to provide special funding to certain designated providers.

2. Legislative Objectives: The Purpose of this Part is to provide a means to support the stability and geographic distribution of substance use disorder treatment services throughout all geographic and economic regions of the state. A designation of Vital Access Provider denotes the state's determination to ensure patient access to a provider's essential services otherwise jeopardized by the provider's payer mix or geographic isolation. Vital Access Providers in the OASAS system are limited to eligible OASAS certified inpatient residential facilities, or such other programs as may be designated by the commissioner.

3. Needs and Benefits: OASAS is proposing to adopt this regulation because New York state has provided funding to ensure the stability and geographic distribution of health and mental hygiene services throughout the state during a period of substantial change in the health and behavioral health systems flowing from the implementation of Medicaid managed care and the federal Affordable Care Act.

This regulation would establish eligibility standards for application and a process for application review to ensure the appropriate programs are designated as Vital Access providers.

4. Costs: No additional administrative costs to the agency are anticipated; no additional costs to programs/providers are anticipated.

5. Paperwork: The proposed regulation will require providers to submit a written application either as a request for information (RFI) or a request for proposals (RFP) which will be reviewed by agency staff consistent with existing procurement reviews.

6. Local Government Mandates: There are no new local government mandates.

7. Duplications: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives: Availability of budgeted funds requires a process for access by intended recipients; this regulation serves that purpose and there is no alternative to adoption of the regulation.

9. Federal Standards: This regulation does not conflict with federal standards.

10. Compliance Schedule: The regulations will be effective upon submission to the Department of State for publication in the State Register.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule creates an application and approval process for the commissioner to identify and approve applicant programs which may qualify for vital access funding pursuant to Chapter 53 of the Laws of 2014. This regulation would establish eligibility standards for application and a process for application review to ensure the appropriate programs are designated as Vital Access providers.

2. Compliance requirements: The rule requires programs to submit a written application specifying certain criteria necessary for the commissioner to identify programs which may need additional funds in order to preserve essential services otherwise jeopardized by the provider's payer mix or geographic location. Vital access providers in the OASAS system are limited to eligible OASAS certified inpatient residential facilities, or such other programs as may be designated by the commissioner.

3. Professional services: No new or additional professional services will be required by the state or eligible providers.

4. Compliance costs: No costs will be incurred by the state or eligible providers beyond staff time involved in preparing and reviewing applications.

5. Economic and technological feasibility: Implementation of the rule will not require any new or additional technological resources by the state or eligible providers. No upgrades of hardware or software will be required.

6. Minimizing adverse impact: The application of the rule will not impose additional costs or operating requirements on providers on local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation: The proposed rule is posted on the agency website; agency rule review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations.

8. Not applicable. (establish or modify a violation or penalties associated with a violation)

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas): OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed Rule would establish eligibility standards for application and a process for application review to ensure the appropriate programs are designated as Vital Access providers. Providers in the OASAS system are limited to eligible OASAS certified inpatient residential facilities, or such other programs as may be designated by the commissioner. Providers would be required to submit a written application documenting eligibility criteria as identified by the commissioner. No additional professional services are required.

3. Costs: No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed.

4. Minimizing adverse impact: The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural area participation: The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities. The proposed regulation requires submission by eligible providers of a written application for designation as a Vital Access Provider in order to receive supplemental funding intended to support the stability and geographic distribution of substance use disorder treatment services throughout all geographic and economic regions of the state. This regulation would establish eligibility standards for application and a process for application review to ensure the appropriate programs are designated as Vital Access providers.

The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees. The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities.

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Compliance with Section 415 of the Internal Revenue Code

I.D. No. AAC-22-14-00004-P

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

Proposed Action: This is a consensus rule making to amend section 379.3(a) of Title 2 NYCRR.

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

Subject: Compliance with section 415 of the Internal Revenue Code.

Purpose: To conform regulation to statutory language of Retirement and Social Security law section 620(5).

Text of proposed rule: Audit and Control

379.3 Internal Revenue Code 415 and cost-of-living adjustments.

(a) The defined benefit payable to a member of the Retirement System shall not exceed the applicable limits under Internal Revenue Code section 415(b), as periodically adjusted by the Secretary of the Treasury pursuant to Internal Revenue Code section 415(d). The limitation year is the [calendar] *fiscal* year. This limit shall apply to a member who has had a severance from employment or, if earlier, an annuity starting date. Benefits that are subject to Internal Revenue Code section 415(b) shall comply with the foregoing limit in each year during which payments are made. The foregoing limit shall be adjusted pursuant to the requirements of Code sections 415(b)(2)(C) and (D) relating to the commencement of benefits at a date prior to age 62 or after age 65, subject to other applicable rules under Internal Revenue Code section 415. No adjustment shall be required to a benefit subject to an automatic benefit increase feature described in Treasury Regulation section 1.415(b)-1(c)(5). To the extent that Internal Revenue Code section 415 and the Treasury Regulations thereunder require that an interest rate under Internal Revenue Code section 417(e) apply, the applicable lookback month shall be the calendar month preceding the current month and the applicable stability period is one calendar month.

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

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

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

Consensus Rule Making Determination:

This is a consensus rulemaking proposed for the sole purpose conforming the language of the regulation to the language of Section 620(5) of the Retirement and Social Security Law. This amendment relates to the definition of a limitation year and it has been determined that no person is likely to object to the adoption of the rule as written.

Department of Economic Development

NOTICE OF ADOPTION

Minority and Women-Owned Business Enterprise Program

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

Filing No. 422

Filing Date: 2014-05-19

Effective Date: 2014-06-04

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

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

Statutory authority: L. 2010, ch. 175

Subject: Minority and Women-Owned Business Enterprise Program.

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

Substance of final rule: 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.

Final rule as compared with last published rule: Nonsubstantive changes were made in Part 140, sections 141.7 and 142.4.

Text of rule and any required statements and analyses may be obtained from: Karanja Augustine, New York State Department of Economic Development, 625 Broadway, Albany, NY 12207, (518) 292-5125, email: kaugustine@esd.ny.gov

Revised Regulatory Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement. The changes made represent clarification of issues that do not impact the regulatory impact statement.

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Statement in Lieu of Regulatory Flexibility Analysis for small business and local governments. The changes made represent clarification of issues that do not impact the statement.

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Statement in Lieu of Rural Area Flexibility Analysis. The changes made represent clarification of issues that do not impact the statement.

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Statement in Lieu of Job Impact Survey. The changes made represent clarification of issues that do not impact the statement.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Pursuant to the State Administrative Procedure Act, this document provides an assessment of public comments received in response to the New York State Department of Economic Development's ("DED") proposed changes to 5 NYCRR Parts 140-145, which govern the statewide minority- and women-owned business enterprise ("MWBE") program. This assessment responds solely to those comments that are significant, and does not respond to comments which failed to address the proposed rulemaking or that pertain to provisions of the regulations that are already in force.

Definition of Commercially Useful Function

Comment: The definition of commercially useful function is too limited, and certain firms engaged in reselling equipment or providing support services (e.g., printing) would be inappropriately excluded.

DED, in consultation with numerous law enforcement agencies, has adopted the commercially useful function standard to protect the program against fraud and ensure that program benefits are provided to the intended recipients. Commercially useful function will be determined on a case-by-case basis within the context of the relevant industry and particular contract scope. No specific areas of performance (e.g., printing) will be automatically excluded.

Comment: Contractors should not be responsible if MWBE firms with which they contract are not able to perform a commercially useful function, and the regulations should assign responsibility to either contracting agencies or the Division of Minority- and Women's Business Development ("Division") to determine whether an MWBE has performed a commercially useful function.

Ensuring that contractors perform commercially useful functions on the projects for which they are counted towards MWBE utilization is an integral component of the MWBE program. All relevant parties, including DED, State agencies, contractors and MWBEs, have responsibilities associated with the determination of commercially useful functions on State contracts. Contractors are crucial partners in commercially useful function assessments because of their expertise in their industry and proximity to contract performance.

Other Definitions

Comment: The definition of "Director" has been removed.

The definition of "Director" has not been removed, but was not listed in correct alphabetical order with the other definitions. The alphabetization of the definition of "Director" has been corrected.

Agency Master Goal Plans

Comment: The Director's exercise of his or her power to adjust the Master Goal Plans of agencies failing to meet the good faith standard would result in unattainable agency goals.

These powers already exist in the Director under the current regulations, and have been circumscribed such that the Director may only adjust agencies' Master Goal Plans upon a finding that the agencies did not act in good faith, which includes a failure to set their own agency-specific goals. In instances where the Director is required to exercise this power, he or she, like a State agency, is required to set appropriate goals in accordance with the requirements of the regulations pursuant to § 141.3(c).

Comment: The definition of Master Goal Plan implies that agency-specific goals must always increase, and should be reworded to reflect neutrality as to whether goals should increase.

In light of the program's remedial nature, and the deficiencies in the utilization of MWBEs identified by the Disparity Study, the program tools, which include Master Goal Plans, are intended to increase participation by MWBEs to meet the identified availability. The definition as written is consistent with the program objectives.

Comment: Why was the word "professional" removed from § 141.3(c)(2)(ii)-(iii)?

The word "professional" is not necessary as it is included in the word "services."

Agency Good Faith Efforts

Comment: Direct negotiations with MWBE firms should be reinstated as a factor to be taken into account by the Director in evaluating whether an agency has made a good faith effort to meet its agency-specific goal.

Removal of the consideration of agencies' direct negotiations with MWBE firms was a technical error, and this factor will be restored in § 141.7(b).

Establishing Contract Goals

Comment: An agency's annual agency-specific goal should not be taken into account when setting goals on specific contracts, and goals should be set based exclusively upon the firms certified in NYS Contract System.

Agencies are required to, on an annual basis, prospectively consider State contracting activities for the fiscal year, and, based on results of this deliberation, determine their ability to set agency-specific MWBE goals. The agency-specific goals that result from these deliberations are directly relevant to individual contract goal-setting, and should be taken into account when setting contract-specific goals, because they reflect a benchmark of practical, feasible and appropriate MWBE utilization on each agency's contracts. Agency-specific goals are only one of a number of factors agencies are required to take into account, and should never be outcome determinative or dispositive for any particular contract.

Comment: In determining appropriate goals for State contracts, agencies should consider "the availability, capacity and willingness of certified. . . firms. . ." rather than the "ability" of certified firms.

The current language already provides for the "availability" and "capacity" elements of the comment. Agencies should not assess "willingness" of certified firms at the goal setting stage because it is impractical and could have the effect of agencies functionally choosing subcontractors for prime contractors, which would be inappropriate.

Quantitative Factor/Diversity Practices

Comment: Two pairs of factors, paragraphs (1) and (4) as well as paragraphs (6) and (7) of § 142.3(e), to be taken into account by agencies when deciding whether to assess the diversity practices of contractors proposing to perform on a state contract, are duplicative.

The identified factors are not duplicative. Paragraph (4) targets prime contractors' indirect expenses for general corporate operations, such as facilities maintenance, general administration, etc., while paragraph (1) relates to all expenses, which includes both direct and indirect costs. Similarly, paragraph (7) targets goals for State certified firms, while paragraph (6) provides for diversity goals broadly, which would include goals for non-NYS certified firms.

Comment: The regulations should clarify whether State agencies or DED will develop a scoring tool to assess the diversity practices of contractors making submissions for the award of State contracts and should provide State agencies with objective guidance as to how to score best value. The regulations should also clarify whether scoring tools will be developed for each contract opportunity. More weight should be afforded to contractors' utilization plans than to retrospective diversity practices in assessing best value, and prospective diversity practices should not be considered on the ground that prospective activities cannot be scored objectively.

Each agency is empowered to adopt its own quantitative factor, which should be ascertained on a contract-by-contract basis. Pursuant to § 142.3(f), DED will provide agencies with guidance concerning the implementation of this section.

Comment: Financial assistance by a contractor to certified MWBE firms should be reinstated as a factor to be considered in evaluating a contractor's diversity practices.

The diversity practices program policy is intended to promote inclusion of MWBEs in state contracting. Financial assistance by prime contractors to certified MWBE firms has been removed because it does not directly relate to the inclusionary practices of prime contractors.

Comment: Expanding the types of contracts for which diversity practices will be considered would result in certified MWBE firms receiving additional contracts at the expense of non-certified small businesses, and would discourage prime contractors from doing business with non-certified small businesses that would not contribute towards the prime contractors' diversity practices score when proposing to perform on State contracts.

The proposed regulation does not expand the types of contracts on which diversity practices are considered.

This policy is designed to provide a preference to MWBEs, which is consistent with the overarching purpose of the program. Furthermore, all certified MWBE firms are, by definition, small businesses. Accordingly, the proposed regulations will have a positive effect on both small businesses and MWBEs.

Comment: Record-keeping requirements associated with demonstrating adherence to diversity practices would lead to fewer potential vendors, particularly small businesses, because of the cost to businesses of maintaining additional records, and contractors should not have to submit company workforce diversity data on contracts over $250,000 prior to the execution of a State contract.

This requirement seeks the production of information that generally is already required by law, or maintained in the ordinary course of business, and therefore is not unduly burdensome for state contractors.

Comment: The regulations should clarify whether proposers to perform on State contracts should submit information on their use of MWBEs certified by any state or governmental entity.

The regulations are sufficient as written. State agencies will receive guidance as to diversity practices-related submissions.

Comment: § 142.14(a) should be deleted because it is not applicable to low bid contracts.

§ 142.14(a) is applicable to best value procurements.

Utilization Plans and Contractor Good Faith Efforts

Comment: Contractors should submit evidence of good faith efforts along with utilization plans. The regulations should also clarify that certified firms can report self-performed work towards a contract goal.

Contractors are already required to show good faith efforts when submitting a waiver request, either in lieu of or in conjunction with, a utilization plan. The regulations already provide that certified MWBEs may report self-performed work.

Comment: Agencies' evaluations of whether contractors made good faith efforts towards utilizing certified MWBE firms should review contractors' past efforts rather than promises to utilize certified MWBE firms on other State contracts, and not consider whether a contractor should reasonably have known whether an MWBE firm utilized by the contractor could not perform a commercially useful function when the MWBE firm was utilized for goods or services for which the MWBE firm was certified.

Agencies are permitted, as part of assessing a contractor's good faith efforts, to consider whether the contractor can structure future procurements to increase the utilization of certified MWBEs. Considering whether contractors should have reasonably known that an MWBE could not perform a commercially useful function protects against fraud, and advances the policy that only firms appropriately certified for the work in question be counted towards utilization goals.

Comment: § 142.10(b)(1) applies to prime contractors and CM at risk contracts in alternative procurements only, and the regulations should allow agencies to find a contractor to be in compliance with a utilization plan when that contractor has demonstrated good faith efforts to achieve the contract goal.

The commenter was not clear as to what was intended by "alternative procurements," but in no case should § 142.10(b)(1) be read to exclude any type of State contract.

Under the MWBE program, agencies consider a contractor's good faith efforts as part of their review of a contractor's request for a waiver of all or part of the MWBE utilization goals set under a utilization plan, not as part of their review of a contractor's compliance with a utilization plan.

Certification

Comment: Change the word "may" to "shall" in § 144.2(c)(6).

The purpose of this provision is to allow the Director to require additional information that addresses instances where applicants for certification as MWBEs do not submit complete information with respect to their ability to perform a commercially useful function. To change "may" to "shall," as proposed in the comment, incorrectly assumes that all MWBE certification applications are incomplete.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mathematics Graduation Requirements

I.D. No. EDU-22-14-00008-EP
Filing No. 425
Filing Date: 2014-05-20
Effective Date: 2014-05-20

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

Proposed Action: Amendment of section 100.5(g)(1) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: At their April 2014 meeting, the Board of Regents amended section 100.5(g) of the Commissioner's Regulations, effective May 14, 2014, to allow for a limited time and at the discretion of the applicable school district, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and meet the mathematics requirement for graduation by passing either examination.

The proposed amendment is needed to make technical changes to correct the numbering of the paragraph, subparagraph and clauses of the amendment adopted at the April 2014 meeting. The April regulation inadvertently omitted the extensive renumbering of section 100.5(g) that occurred when separate amendments were made to sections 100.5 and 100.18 in February 2014. Among the changes was to renumber section 100.5(g)(2)(i) and (ii) to 100.5(g)(1)(ii)(a) and (b), relating to the mathematics requirements for a diploma.

In addition, the proposed amendment eliminates redundant language and otherwise clarifies that the April amendment is applicable to students who first begin instruction in a commencement level mathematics course aligned to the Common Core Learning Standards in September 2013 and thereafter. The April amendment inadvertently placed the Geometry examination provision in section 100.5(g)(ii)(b) instead of in 100.5(g)(ii)(a).

Because the Board of Regents meets at scheduled intervals, the September 2014 meeting is the earliest the proposed rule could be presented for adoption, after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on June 4, 2014 and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to immediately make technical changes and clarify the text of the regulation to prevent any potential confusion and misinterpretation regarding the provisions of the regulation.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its September 15-16, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Mathematics graduation requirements.

Purpose: To make technical corrections and clarify the text of the regulation.

Text of emergency/proposed rule: Subparagraph (ii) of paragraph (1) of subdivision (g) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective May 20, 2014, as follows:

(ii) Mathematics.

(a) Students who first begin instruction in a commencement level mathematics course aligned to the Common Core Learning Standards in September 2013 and thereafter shall meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing a commencement level Regents Examination in mathematics that measures the Common Core Learning Standards, or an approved alternative pursuant to section 100.2(f) of this Part; provided that*:*

(1) for the June 2014, August 2014 and January 2015 administrations only, students receiving Algebra I (Common Core) instruction may, at the discretion of the applicable school district, take the Regents Examination in Integrated Algebra in addition to the Regents Examination in Algebra I (Common Core), and may meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing either examination*; and*

(2) for the June 2015, August 2015 and January 2016 administrations only, students receiving Geometry (Common Core) instruction may, at the discretion of the applicable school district, take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and may meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing either examination.

(b) Students who first began or will complete an Integrated Algebra, Geometry, or Algebra 2/Trigonometry course prior to September 2013 shall meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing the corresponding commencement level Regents Examinations in mathematics or an approved alternative pursuant to section 100.2(f) of this Part [; provided that:

(1) for the June 2014, August 2014 and January 2015 administrations only, students receiving Algebra I (Common Core) instruction may, at the discretion of the applicable school district, take the Regents Examination in Integrated Algebra in addition to the Regents Examination in Algebra I (Common Core), and may meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing either examination; and

(2) for the June 2015, August 2015 and January 2016 administrations only, students receiving Geometry (Common Core) instruction may, at the discretion of the applicable school district, take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and may meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing either examination].

(c) . . .

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 August 17, 2014.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, 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 Wagner, Deputy Commissioner, Office of Curriculum, Assessment and Educational Technology, EBA Room 875, 89 Washington Ave., Albany, NY 12234, (518) 474-5915, 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 the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the Department by law.

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 305 (1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of 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 the Commissioner with the 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 the State education department to alter the subjects of required instruction.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

At their April 2014 meeting, the Board of Regents amended section 100.5(g) of the Commissioner's Regulations, effective May 14, 2014, to allow for a limited time and at the discretion of the applicable school district, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and meet the mathematics requirement for graduation by passing either examination.

The proposed amendment is needed to make technical changes to correct the numbering of the paragraph, subparagraph and clauses of the amendment adopted at the April 2014 meeting. The April regulation inadvertently omitted the extensive renumbering of section 100.5(g) that occurred when separate amendments were made to sections 100.5 and 100.18 in February 2014. Among the changes was to renumber section 100.5(g)(2)(i) and (ii) to 100.5(g)(1)(ii)(a) and (b), relating to the mathematics requirements for a diploma.

In addition, the proposed amendment eliminates redundant language and otherwise clarifies that the April amendment is applicable to students who first begin instruction in a commencement level mathematics course aligned to the Common Core Learning Standards in September 2013 and thereafter.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any costs to the State, school districts, charter schools or the State Education Department. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

6. PAPERWORK:

The proposed amendment does not impose any additional 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 make technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarify the text of the regulation. There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed amendment by its effective date. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to make technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarify the text of the regulation. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, 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 Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 34 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements upon local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any costs or technological requirements on school districts or charter schools. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them 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 imposes no compliance requirements or costs on regulated parties, but merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation. Accordingly, there is no need for a shorter review period.

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 each of the 695 public school districts in the State, 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. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

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

The proposed amendment does not impose any additional compliance requirements upon local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located 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 imposes no compliance requirements or costs on regulated parties, but merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation. Accordingly, there is no need for a shorter review period.

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 amendment is necessary to make technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarify the text of the regulation. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or 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

Satisfaction of Education Requirements for Certification in the Classroom Teaching Service Through Individual Evaluation

I.D. No. EDU-10-14-00010-A
Filing No. 424
Filing Date: 2014-05-20
Effective Date: 2014-06-04

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

Action taken: Amendment of sections 80-3.3(a)(3)(iii) and 80-3.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)(b)

Subject: Satisfaction of education requirements for certification in the classroom teaching service through individual evaluation.

Purpose: To discontinue the individual evaluation pathway for certain certificate titles and continue the individual evaluation pathway for all other certificate titles.

Text or summary was published in the March 12, 2014 issue of the Register, I.D. No. EDU-10-14-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, 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.

Department of Environmental Conservation

NOTICE OF ADOPTION

Transport of Aquatic Invasive Species to and from Department Boat Launches

I.D. No. ENV-01-14-00024-A
Filing No. 421
Filing Date: 2014-05-19
Effective Date: 2014-06-04

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

Action taken: Amendment of sections 59.4 and 190.24 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303-01, 11-0305-09, 11-2101, 3-0301(d), 9-0105(1) and 9-1709

Subject: Transport of Aquatic Invasive Species to and from Department Boat Launches.

Purpose: To prevent the spread of aquatic invasive species to and from waters that the Department provides boating access to.

Text or summary was published in the January 8, 2014 issue of the Register, I.D. No. ENV-01-14-00024-P.

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

Text of rule and any required statements and analyses may be obtained from: Phil Hulbert, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8894, email: pxhulber@gw.dec.state.ny.us

Assessment of Public Comment

Over 150 comments were received. The majority of commentors were in favor of the proposal, although some commented that the regulatory

should go beyond DEC administered and questions DEC's abilities to enforce these regulations. This assessment includes all of the substantive issues raised and DEC's response.

Comment: The proposed regulations are too limited and should apply to all boating access facilities as well as boats and trailers transported outside of these facilities.

Response: DEC has elected to promulgate regulations for boat launching facilities that it administers and has direct control over. Because these are new requirements, DEC has determined that it should focus its resources to launches on state lands and continue to conduct outreach and xxx as this program xxx. DEC will continue to cooperate with and encourage other state agencies to develop similar regulations for the sites they administer.

Comment: How will these regulations be enforced? What are the fines?

As with all DEC laws and regulations, they will be enforced using the existing network of DEC Environmental Officers and Forest Rangers. They may also be enforced by any peace or police officer. Fines for violation of these regulations are $250 or 15 days in jail. This is the standard penalty for violations of Fish and Wildlife Law.

Comment: Since DEC boat launches are not supervised 24 hrs each day, 7 days per week during the boating season these regulations are unenforceable.

Response: The regulations will be enforced in the same fashion that all of the Fish and Wildlife laws are enforced, through the actions of our Environmental Conservation Officers and Forest Rangers with the assistance of the public. Just like every angler cannot be checked for a fishing license, it is unreasonable to expect every boat to be checked for invasive species. It is anticipated that through priority patrols of boat launches with known AIS problems and the general word of mouth that DEC is indeed enforcing these regulations, that the already small percentage of boaters that transport AIS will be further reduced.

Comment: These regulations are limited in scope and effectiveness. New York needs a comprehensive statewide AIS prevention, interdiction, control and education program.

Response: These regulations are not intended to be a stand-alone product, but rather a component of a comprehensive statewide effort to combat the spread of AIS using public and private partners. DEC is currently in the process of updating the New York State AIS Management Plan which will provide a comprehensive strategy.

Comment: Without wash stations, it will be impossible to clean all visible invasives off a boat. Will a hose with water be provided to wash down boats at launch ramps?

Response: Rinse water is provided at some DEC campground launches and marine launches and its availability may be expanded to other facilities where microscopic AIS are a concern and a source of water is readily available. Research has noted that visual inspection and hand removal are as effective as washing in the removal of visible aquatic invasive species.

Comment: I know of very few bilges that will drain dry. Some method of killing plant and animal species in residual bilge water is needed.

Response: The Department will continue to encourage the use of hot water in excess of 140° to kill plant and animal species in remnant bilge water. If hot water is not available, boaters will be encouraged to flush their bilge prior to launching.

Comment: Will there be any fee associated with this program?

Response: There are no fees associated with these regulations.

Comment: The 6 NYCRR Part 575 regulations should be cited in the 59.4 regulations to positively identify which invasive species are prohibited or regulated.

Response: Many AIS, particularly small plant fragments, are difficult or impossible to ID outside of a laboratory setting. DEC does not expect law enforcement staff to be able to separate AIS from non-AIS, therefore the regulation does not specifically apply to AIS, but rather to all aquatic plants and animals. Parts 59.4 and 190.24 are entirely separate from Part 575 and are promulgated under different legislative authorities and address 2 different "pathways" for invasive species introduction and spread.

Comment: These regulations are overly restrictive. They limit access to too many waterbodies and also limit time of access throughout the year impacting not only fisherman but also waterfowlers and riparian landowners. We recommend that the proposed Lake George regulations not become a model for the state as a whole.

Response: These regulations are substantially different from the Lake George program requiring mandatory inspection and decontamination via hot water pressure washing. The simple acts of draining and removing AIS clinging to a boat or trailer are not burdensome and should not adversely impact the average boater or angler. These regulations do not limit access to waterbodies for any category of users.

Comment: Given the new regulations, how do fishermen legally transport bait to the lake from the bait shop?

Response: Bait users will be required to carry their bait to and from the launch ramp in a bucket or other suitable container.

Comment: Boaters need the tools to remove zebra mussels. Hot water pressure washers need to be placed at state boat launches.

Response: Boaters mooring or docking boats in zebra mussel infested waters will have the capability to obtain a DEC permit allowing them to take the boat directly from a waterbody to a place of storage or other location where zebra mussels can be removed. Hot water pressure washers are a scalding risk and can only be used by trained staff and could not be provided 24 hours per day during the entire boating season at DEC facilities. In the select circumstances where they have been employed in other states, they are best positioned outside of the actual boat launch to avoid additional congestion and confusion at these locations. DEC is reviewing various options to provide boaters a 24 hr option for the removal of zebra mussels.

Comment: How will this regulation affect me if I launch before daylight or after hours?

Response: As long as your boat arrives drained and clean of any visible aquatic plants and animals, you may launch at any time of the day.

Comment: Boats are but one source of AIS. What is being done about other potential vectors?

Response: Although there are a number of potential vectors, boats have been identified as one of the most important and they are something that DEC can do something about at the launch sites it administers.

Comment: These regulations will cause a serious problem for tourists coming into New York from other states and Canada. How will they be informed about the new boating rules? How will they receive a permit?

Response: The simple act of removing visible plants and animals from a boat or trailer and draining a boat will not cause any additional burden on in-state or out of state boaters. DEC will make a concerted effort to advise boaters of these new regulations prior to their implementation. No permits are necessary for the average user to comply with these regulations.

Comment: It is doubtful that canoes and kayaks transported from one waterbody to the next will spread AIS. This is a terrible burden on simple users of the resources I pay for with my taxes.

Response: Any boat, whether it is motorized or not is a potential risk to spread AIS unless it is properly drained and cleaned. In the case of a kayak, the simple act of turning it over and draining any residual water is not overly burdensome and is typically done before loading the kayak on a vehicle.

Comment: If someone has a boat in a marina, or moored to their dock and attempts to remove it from the water at the ramp, yet doesn't realize that there are invasive species on the boat, how will that person be able to clean the boat at the ramp so that it can be transported to its storage location?

Response: DEC understands that boaters docking or mooring their boat in zebra or quagga mussel infested waters will likely not be able to adequately clean their boat of these AIS prior to leaving the launch. Such users can obtain a permit that will allow them to transport their boat directly to a place where it can be adequately cleaned.

Comment: The proposed rule would not allow possession of a ham sandwich or other non-companion animal part intended a food under these rules. Is this correct?

Response: These regulations are intended to prevent the spread of AIS and DEC law enforcement personnel will use appropriate discretion to ensure that any enforcement actions are directed towards aquatic plant and animal species.

Comment: DEC's efforts to control the spread of AIS should not be limited to these regulations.

Response: DEC's efforts to prevent the spread of AIS will not end with the enactment of these regulations. Outreach and education are extremely important tools in the fight against AIS and DEC will continue to expand and improve the information it makes available to the public in print and via the DEC website. DEC is also in the process of developing an updated AIS Management Plan for New York State which will help guide future AIS spread prevention efforts.

Comment: This regulation does not account for the non-visible spectrum of life cycles.

Response: The primary mechanisms by which non-visible AIS may be spread is through water in the bilge, livewell and other water holding compartments The requirement that boats be drained before leaving a DEC launch site will address this concern. AIS may also be spread by attaching to plants and other visual debris. The requirement that all boats and trailers must be free of visible plant and animal material will address this possible spread mechanism.

Comment: The exemption for plants used as camouflage on boats could lead to inadvertent transport of AIS that may be attached to these plants.

Response: DEC considers this risk to be minimal. This exemption primarily applies to duck hunters who commonly use plant material for camouflage. These activities typically occur during cold water periods when the risk of AIS spread is reduced and the plants used are typically terrestrial (ie. cedar branches, corn stalks, etc.) minimizing the risk of AIS

spread. Those using camouflage on their boats would still be held to the same standard of draining their boat and ensuring that any plants or other items used for camouflage are free of other plant and animal debris. DEC has included AIS spread prevention information on the waterfowl and migratory game bird hunting section of its website and will also include this information in the hunting regulations guide.

Comment: The concept of "visible to the human eye" is too vague for formal enforceable legislation.

Response: DEC law enforcement is comfortable with this terminology and will use the appropriate degree of discretion to ensure that a boater has taken reasonable steps to inspect their entire boat, trailer and associated equipment and gear.

Comment: The proposed regulation should be made more thorough by including mud from the list of things that need to be removed from boats, trailers, etc.

Response: Mud commonly accumulates on boats and trailers during the process of travelling to a boat launch down a muddy road. Mud of this nature is not of concern and discerning mud accumulated from the act of boating from that gathered along the road would be impossible.

Comment: DEC should require boats to be dried and disinfected prior to launching and prior to leaving a boat launch.

Response: It is unreasonable to expect a boat to be dried prior to leaving a boat launch. The complete drying of a boat may take weeks during damp, cool periods. Disinfection at a boat launch is also difficult due to the lack of a hot water source at boat launches and restrictions associated with the use of other potential disinfection materials. Boat disinfection is best completed away from the actual launch location. DEC provides disinfection advice at www.dec.ny.gov/animals/48221.html.

Comment: What if my boat cannot be drained?

Response: You will need to utilize another method such as a manual or electric pump to remove remnant water from your boat.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Hunting with Crossbows

I.D. No. ENV-22-14-00015-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 1 and 2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0713, 11-0901, 11-0907, 11-0929 and 11-0933

Subject: Hunting with crossbows.

Purpose: To authorize use of a crossbow during certain big and small game hunting seasons.

Text of proposed rule: Amend 6 NYCRR, Part 1, entitled "Single Species," as follows:

Amend subdivision 6 NYCRR 1.11(d) as follows:

(d) Other requirements.

(1) During the regular season in Westchester and Suffolk Counties, white-tailed deer may only be taken by longbow.

(2) During all seasons in Wildlife Management Units 4J and 8C, white-tailed deer may only be taken by longbow.

(3) During the youth firearms season, junior bowhunters, hunting pursuant to a junior bowhunting license, may only take deer by longbow. Junior hunters, hunting pursuant to a junior hunting license, may take deer with a firearm[or crossbow].

(4) During the youth firearms season, junior hunters may take only one deer, of either sex, by use of a firearm.

(5) Any youth participating in the youth firearms season shall be accompanied by an adult as required by Environmental Conservation Law § 11-0929. An adult who is accompanying a junior hunter during the youth firearms season, may not possess a firearm, longbow or crossbow and shall not be actively engaged in any other hunting.

[(5)]*(6)* It is unlawful for any person to hunt or take a deer during the muzzleloading deer season except with a muzzleloading firearm capable of being loaded with only one charge *or a crossbow*.

[(6)]*(7)* During the Northern Zone muzzleloading season, the types of deer that may be legally harvested, the open Wildlife Management Units (WMUs) as described in section 4.1 of this Part are as set forth below.

	Open WMUs for harvest of deer of either sex	Open WMUs for harvest only of antlerless deer or deer having both antlers less than three inches in length	Open WMUs for harvest of antlered deer only
Early Muzzleloader	5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K		6N
Late Muzzleloader	5A, 5G, 5J, 6A, 6C, 6G, 6H		

Amend subdivision 6 NYCRR 1.30 (b) as follows:

(b) General Provisions. The provisions of this section shall apply to the taking of antlerless deer, as described below in subdivision 1.30(e), by longbow, *crossbow,* muzzleloader or firearm pursuant to a DMAP as provided by Environmental Conservation Law (ECL) section 11-0903, subdivision 11. The general provisions contained in articles 11 and 71 of the ECL, except as otherwise noted herein, relating to hunting hours, the manner of taking, tagging, possession, transporting, reporting and other hunting regulations, shall apply to the hunting and taking of antlerless deer pursuant to this section.

Amend subparagraph 6 NYCRR 1.31 (b)(3)(i) and (ii) as follows:

(i) Any person who hunts or takes bear during bowhunting season must possess a license and carcass tag valid to hunt big game granting special bowhunting season privileges*, except as described in subparagraph 2.3(e)(3)(iv) of this title*.

(ii) Any person participating in the bowhunting bear hunting season may not have in his or her possession, or be accompanied by a person who has in his or her possession, any hunting implement other than a legal longbow*, except as described in subparagraph 2.3(e)(3)(iii) of this title*.

Amend subparagraph 6 NYCRR 1.40 (c)(3)(ii) as follows:

(ii) Supervision. Any youth participating in the spring youth hunt for wild turkey shall be accompanied by an adult as required by Environmental Conservation Law § 11-0929. An adult who is accompanying a youth hunter pursuant to this section shall possess a valid hunting license and turkey permit. An adult who is accompanying a youth hunter may call for and otherwise assist the youth hunter, but shall not carry a firearm*, crossbow,* or longbow or kill a wild turkey during the youth hunt.

Amend paragraph 6 NYCRR 1.40 (f)(2) as follows:

(2) A permittee may hunt turkey with a long, recurve or compound bow *or crossbow*.

Amend 6 NYCRR, Part 2, entitled "More Than One Species," as follows:

Delete heading above Section 2.1 of 6 NYCRR Part 2, which reads "Deer and Bear".

Repeal existing section 6 NYCRR 2.3 and adopt a new section 2.3 as follows:

2.3 Hunting with a crossbow.

(a) Definitions.

(1) "Crossbow" means a bow and string, either compound or recurve, that launches a bolt or arrow, mounted upon a stock with a trigger that holds the string and limbs under tension until released.

(2) "Crossbow Certificate of Qualification" means a certificate, as provided by the Department of Environmental Conservation (DEC or department), signed by the hunter that will be using a crossbow, certifying that he or she has satisfied the department's legal requirements for crossbow training.

(b) Purpose. The provisions of this section shall apply to the taking of deer, bear, small game and upland game birds by crossbow pursuant to sections 11-0713, 11-0901, 11-0907, 11-0929 and 11-0933 of the Environmental Conservation Law.

(c) Specifications.

(1) Crossbows must have a minimum limb width of seventeen inches when uncocked and measured from the outer limb tips and a minimum length of twenty-four inches measured from the butt-stock to the front of the limbs.

(2) The peak draw weight shall be a minimum of one hundred pounds and a maximum of two hundred pounds.

(3) Crossbow triggers must have a working safety.

(4) Crossbow bolts or arrows must be a minimum of fourteen inches, not including the point or broadhead.

(d) Training. Hunters may use a crossbow to hunt wildlife, or act as a mentor for a junior hunter using a crossbow, only after they have completed training that includes at a minimum instruction in the types and parts of a crossbow, cocking and uncocking the crossbow, proper holding and use while afield, and effective shooting range. Such training shall be completed either through:

(1) a Standard Hunter Education course offered by DEC on or after April 1, 2014; or

(2) a DEC-approved on-line or other training program in the safe use of hunting with a crossbow and responsible crossbow hunting practices. The department shall post on DEC's website, and in the New

York State Hunting and Trapping Regulations Guide, requirements and directions for completing crossbow training. After completion of the training, the hunter and any mentor must complete and sign a crossbow certificate of qualification provided by the department. Hunters or mentors who have not attended a Standard Hunter Education course on or after April 1, 2014 must carry this signed self-certification in the field when hunting with a crossbow as proof of compliance.

(e) Hunting with a crossbow.

(1) Crossbows may only be used by hunters 14 years of age or older.

(2) Small game mammals and upland game birds (including wild turkey) may be taken with a crossbow in accordance with the provisions of sections 1.40, 2.20 and 2.25 of this title, except that crossbows may not be used in Nassau, Suffolk, or Westchester counties.

(3) Deer and bear may be taken with a crossbow in accordance with the provisions of sections 1.11 and 1.31 of this title and the following:

(i) Crossbows may be used to take deer during the regular and muzzleloader seasons in the Northern Zone and during the regular and late muzzleloader seasons in the Southern Zone, as described in Section 1.11 of this title.

(ii) Crossbows may be used to take bear during the early and regular bear seasons in the Northern and Southern bear ranges, during the early muzzleloading season in the Northern bear range, and during the late muzzleloading season in the Southern bear range, as described in Section 1.31 of this title.

(iii) Crossbows may be used to take deer or bear during the last ten days of the early bowhunting season in the Northern Zone (same as Northern bear range) and during the last fourteen days of the early bowhunting season in the Southern Zone (same as Southern bear range).

(iv) Hunters must possess a muzzleloading hunting privilege to hunt deer or bear with a crossbow during any muzzleloader season or during open portions of the early bowhunting seasons.

Amend subparagraph 6 NYCRR 2.25 (b)(3)(i) as follows:

(i) Eligibility. In addition to the open seasons set forth in this subdivision, licensed junior hunters (12-15 years of age), accompanied by an adult in accordance with section 11-0929 of the Environmental Conservation Law, may take pheasants on special Youth Pheasant Hunting Days, as specified in this paragraph. Any adult who is accompanying a youth hunter pursuant to this section shall possess a valid hunting license, but shall not carry a firearm*, crossbow* or longbow or kill a pheasant during the youth hunt.

Text of proposed rule and any required statements and analyses may be obtained from: Bryan Swift, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8922, email: blswift@gw.dec.state.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (DEC or department) to develop and carry out programs that maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL 11-0303 grants the department authority to efficiently manage fish and wildlife resources of the State.

More specifically, Chapter 55 of the Laws of 2014 amended ECL sections 11-0901, 11-0907, and 11-0929 and added a new ECL section 11-0933 effective April 1, 2014, which authorize the department to adopt regulations allowing the taking of small game, wild upland game birds, and big game (deer and bear) by the use of a crossbow. In addition, section 11-0713 of the ECL was amended requiring the department to require training in safe use of a crossbow for hunting and responsible hunting practices in the basic hunter education course for all new hunters and to provide an online or other crossbow training program approved by the department for existing hunters prior to using a crossbow to hunt.

2. Legislative objectives:

The legislative objectives behind the general statutory provisions listed above are to authorize the department to establish, by regulation, certain basic wildlife management tools, including hunting. Periodically, the department adjusts its hunting regulations in response to changes in hunting technology. By doing so, wildlife management tools are kept up to date. The legislative objectives of the provisions enacted in Chapter 55 were to allow the taking of small game, upland game birds and big game by the use of a crossbow during regular and muzzleloader hunting seasons when firearms are also allowed and during a limited portion of the early bowhunting seasons. The legislative objectives also include hunter safety, by requiring training in safe crossbow hunting for hunters who wish to use a crossbow in the field.

3. Needs and benefits:

New regulations must be adopted to implement provisions of the statute allowing the use of crossbows for hunting. The regulations proposed herein are necessary to implement and clarify provisions of the new law, so crossbows will be a legal implement for fall 2014 and subsequent hunting seasons.

The new statute authorizes the department to allow the taking of small game and upland game birds by the use of a crossbow by any licensed person during any small game hunting season. The new statute also authorizes the department to allow the taking of big game (deer and bear) by the use of a crossbow by any licensed person during a specified portion of the bowhunting seasons and during any big game hunting season in which use of a firearm (shotgun, rifle or muzzleloader) is allowed, except for the Youth Deer Hunting weekend and the January firearms deer season on Long Island. Therefore, amendments are proposed to deer, bear, turkey, and small game hunting regulations to include the crossbow as a legal implement, and to adopt specific provisions of the statute.

Allowing the use of crossbows would provide several public benefits. High deer populations in some portions of the state, particularly where access or firearm use is restricted, are causing adverse impacts on forest regeneration, biodiversity protection, public and private property (through vehicle collisions and damage to ornamental plantings), and public health (e.g., Lyme disease). As an additional tool that may appeal to hunters who are either unable or not attracted to use conventional bows, crossbows are a potentially important tool to help manage deer populations in those areas. Allowing crossbow use would also support the Department's efforts to retain and recruit big game hunters in the future. Crossbows are especially popular among younger and older hunters, as well as for hunters with disabilities, all of whom may have difficulty drawing and holding conventional bows in the field. Allowing the use of crossbows during bowhunting seasons would not disrupt or interfere with anyone who chooses to hunt with a conventional bow – except that we may get more people out hunting deer, which would increase revenues from the sale of hunting licenses and contribute to the management of deer, especially in urban areas.

4. Costs:

Training in the safe use of crossbows will be more fully incorporated into the statewide sportsman education courses. A limited supply of crossbows was purchased for this purpose in 2012, but some additional quantities will be needed to supply each region with enough for hands-on training for approximately 35,000 new students annually.

There will be no additional fees or costs (other than purchase of crossbow equipment) for hunters to use a crossbow, and disabled hunters will no longer have to pay an application fee for a permit to hunt with a specially equipped longbow.

5. Local government mandates:

There are no local governmental mandates associated with this proposed regulation.

6. Paperwork:

No additional paperwork is associated with this proposed regulation.

7. Duplication:

There are no other regulations similar to this proposal.

8. Alternatives:

The statute provides little discretion to the Department. The language provides clear indications for when and where crossbows may be allowed to satisfy the intent of the statute. One alternative considered by the department would be to allow crossbows for big game only during firearms hunting seasons, as was temporarily authorized by the legislature for 2011 and 2012. However, such limited use of crossbows does not address deer management needs, nor is it consistent with hunter preferences, or the clear intent of the statute to allow use of crossbows during a portion of the archery seasons for big game. A majority of New York deer hunters (including most bowhunters) support legalization of crossbows, particularly for seniors (68%) and hunters with disabilities (78%), but also for all hunters during seasons when other bowhunting equipment is allowed (51%). Only 19% of hunters believe crossbow use should be limited to the regular firearms season. Another alternative considered was to restrict the use of crossbows during the archery season to a subset of hunters, based on age or disability that might limit a person's ability to use a regular longbow. Crossbows are especially popular among younger and older hunters, as well as for hunters with disabilities, all of whom may have difficulty drawing and holding conventional bows in the field. However, the statutory language does not suggest any intent to limit this authority to certain people. Furthermore, this alternative would require establishing some arbitrary criteria and proof of eligibility requirements that would further complicate big game hunting regulations.

Finally, we could have proposed opening the Northern Zone archery

season for deer a week earlier to allow additional time for use of crossbows prior to the early muzzleloader season. However, this would deviate from the season structure that was established in the Department's recently adopted deer management plan, and we believe that was not the intent of the statutory amendments.

9. Federal standards:

There are no federal standards pertaining to the use of crossbows or modified longbows.

10. Compliance schedule:

Hunters wishing to use crossbows would be required to comply with the new regulations beginning with the start of the hunting seasons in the 2014-15 license year, which begins on September 1, 2014.

Regulatory Flexibility Analysis

Chapter 55 of the Laws of 2014, effective April 1, 2014, amended the Environmental Conservation Law (ECL) to authorize the Department of Environmental Conservation (department) to adopt regulations allowing the taking of small game, wild upland game birds, and big game (deer and bear) by the use of a crossbow, subject to certain restrictions.

The proposed regulation simply implements the statutory provisions and clarifies that crossbows may be used for hunting pursuant to ECL sections 11-0713, 11-0901, 11-0907, 11-0929 and 11-0933. All reporting, record-keeping, and compliance requirements associated with hunting are administered by the department, and the proposed rule would not impose any reporting, record-keeping, or other compliance requirements on small businesses or local governments. The proposed rule also would not have any adverse economic effect on small businesses or local governments. As discussed in the Job Impact Statement, the proposed rule may have a modest beneficial impact on small businesses as some hunters may purchase new crossbow hunting equipment to take advantage of this new opportunity.

Therefore, the department has determined that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rules allow the use of crossbows to hunt small game, wild upland game birds, and big game (deer and bear) throughout New York State, except for Suffolk, Nassau and Westchester counties. Consequently, the proposed regulation impacts rural areas throughout most of the state north of Westchester County.

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

All reporting, recordkeeping and other compliance requirements, and professional services associated with the proposed regulation is the responsibility of the New York State Department of Environmental Conservation (department).

3. Costs:

All costs associated with the implementation and enforcement of the proposed regulation are the responsibility of the department.

4. Minimizing adverse impact:

The proposed rule making will allow hunters throughout most of New York to hunt several game species with a crossbow. The proposed changes will enhance management actions recommended by the public and provide new opportunities for hunters, thereby having a positive effect on rural areas. As discussed in the Job Impact Statement, the proposed rule may also have a beneficial impact on small businesses as some hunters may purchase new crossbow hunting equipment to take advantage of this new opportunity.

5. Rural area participation:

The proposed regulations implement provisions of Chapter 55 of the Laws of 2014, effective April 1, 2014. The legislative process provided opportunity for representatives of rural areas to have input on the specific provisions pertaining to use of crossbows for hunting throughout the state.

Job Impact Statement

1. Nature of Impact:

This rule is necessary to implement provisions of Chapter 55 of the laws of 2014, effective April 1, 2014, which amended the Environmental Conservation Law to authorize the taking of small game, wild upland game birds, and big game (deer and bear) by the use of a crossbow, with certain restrictions. The proposed rule may have a modest beneficial impact on jobs and employment opportunities as some hunters may purchase crossbow hunting equipment to take advantage of this new opportunity.

2. Categories and numbers affected:

Crossbow hunting equipment is already being sold at some sporting goods stores throughout the state, and as crossbow hunting becomes more popular, additional stores are likely to include more crossbow hunting equipment in their inventory. The Department of Environmental Conservation (department) does not have a record of the number of sporting goods stores in New York. However, if only 2% of New York's 500,000 or more big game hunters purchase a crossbow, at an average price of $500, retail sales of new equipment alone could exceed $5 million, which should benefit some of these businesses in New York.

3. Regions of adverse impact:

The proposed regulation would result in increased opportunities for hunters and increased revenue for certain business owners, and therefore should not result in adverse impacts to any region of the state.

4. Minimizing adverse impact:

There would not be any substantial adverse impact on jobs or employment opportunities as a consequence of this rule making.

Department of Financial Services

EMERGENCY RULE MAKING

Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No. DFS-22-14-00002-E

Filing No. 414

Filing Date: 2014-05-14

Effective Date: 2014-05-14

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

Action taken: Amendment of Part 216 (Regulation 64) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301 and 2601

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

Specific reasons underlying the finding of necessity: Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims properly.

On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, some homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Moreover, there are insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Fair and prompt settlement of claims is critical for homeowners, a number of whom have been displaced from their homes or are living in unsafe conditions, and for small businesses, a number of which have yet to return to full operation and to recover their losses caused by the storm.

Given the nature and extent of the damage, an alternative avenue to mediate the claims would help protect the public and ensure its safety and welfare.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the public health, public safety, and general welfare.

Subject: Unfair Claims Settlement Practices and Claim Cost Control Measures.

Purpose: To create a mediation program to facilitate the negotiation of certain insurance claims arising between 10/26/12 - 11/15/12.

Text of emergency rule: *216.13 Mediation.*

(a) This section shall apply to any claim for loss or damage, other than claims made under flood policies issued under the national flood insurance program, occurring from October 26, 2012 through November 15, 2012, in the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk or Westchester, including their adjacent waters, with respect to:

(1) loss of or damage to real property; or

(2) loss of or damage to personal property, other than damage to a motor vehicle.

(b)(1) Except as provided in paragraph (2) of this subdivision, an insurer shall send the notice required by paragraph (3) of this subdivision to a claimant, or the claimant's authorized representative:

(i) at the time the insurer denies a claim in whole or in part;

(ii) within 10 business days of the date that the insurer receives notification from a claimant that the claimant disputes a settlement offer made by the insurer, provided that the difference between the positions of the insurer and claimant is $1,000 or more; or

(iii) within two business days when the insurer has not offered to settle within 45 days after it has received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant.

(2) If, prior to the effective date of this section: the insurer denied a claim in whole or in part; or a claimant disputed a settlement offer, or more than 45 days elapsed after the insurer received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant, and in either case the claim still remains unresolved as of the effective date of this section, then the insurer shall provide the notice required by paragraph (3) of this subdivision within ten business days from the effective date of this section.

(3) The notice specified in paragraphs (1) and (2) of this subdivision shall inform the claimant of the claimant's right to request mediation and shall provide instructions on how the claimant may request mediation, including the name, address, phone number, and fax number of an organization designated by the superintendent to provide a mediator to mediate claims pursuant to this section. The notice shall also provide the insurer's address and phone number for requesting additional information.

(c) If the claimant submits a request for mediation to the insurer, the insurer shall forward the request to the designated organization within three business days of receiving the request.

(d) The insurer shall pay the designated organization's fee for the mediation to the designated organization within five days of the insurer receiving a bill from the designated organization.

(e)(1) The mediation shall be conducted in accordance with procedures established by the designated organization and approved by the superintendent.

(2) A mediation may be conducted by face-to-face meeting of the parties, videoconference, or telephone conference, as determined by the designated organization in consultation with the parties.

(3) A mediation may address any disputed issues for a claim to which this section applies, except that a mediation shall not address and the insurer shall not be required to attend a mediation for:

(i) a dispute in property valuation that has been submitted to an appraisal process or a claim that is the subject of a civil action filed by the insured against the insurer, unless the insurer and the insured agree otherwise;

(ii) any claim that the insurer has reason to believe is a fraudulent transaction or for which the insurer has knowledge that a fraudulent insurance transaction has taken place; or

(iii) any type of dispute that the designated organization has excepted from its mediation process in accordance with the organization's procedures approved by the superintendent.

(f)(1) The insurer must participate in good faith in all mediations scheduled by the designated organization, which shall at a minimum include compliance with paragraphs (2), (3), and (4) of this subdivision.

(2) The insurer shall send a representative to the mediation who is knowledgeable with respect to the particular claim; and who has authority to make a binding claims decision on behalf of the insurer and to issue payment on behalf of the insurer. The insurer's representative must bring a copy of the policy and the entire claims file, including all relevant documentation and correspondence with the claimant.

(3) An insurer's representatives shall not continuously disrupt the process, become unduly argumentative or adversarial or otherwise inhibit the negotiations.

(4) An insurer that does not alter its original decision on the claim is not, on that basis alone, failing to act in good faith if it provides a reasonable explanation for its action.

(g) An insured's right to request mediation pursuant to this section shall not affect any other right the insured may have to redress the dispute, including remedies specified in the insurance policy, such as an insured's right to request an appraisal, the right to litigate the dispute in the courts if no agreement is reached, or any right provided by law.

(h)(1) No organization shall be designated by the superintendent unless it agrees that:

(i) the superintendent shall oversee the operational procedures of the designated organization with respect to administration of the mediation program, and shall have access to all systems, databases, and records related to the mediation program; and

(ii) the organization shall make reports to the superintendent in whatever form and as often as the superintendent prescribes.

(2) No organization shall be designated unless its procedures, approved by the superintendent, require that:

(i) the parties agree in writing prior to the mediation that statements made during the mediation are confidential and will not be admitted into evidence in any civil litigation concerning the claim, except with respect to any proceeding or investigation of insurance fraud;

(ii) a settlement agreement reached in a mediation shall be transcribed into a written agreement, on a form approved by the superintendent, that is signed by a representative of the insurer with the authority to do so and by the claimant; and

(iii) a settlement agreement prepared during a mediation shall include a provision affording the claimant a right to rescind the agreement within three business days from the date of the settlement, provided that the insured has not cashed or deposited any check or draft disbursed to the claimant for the disputed matters as a result of the agreement reached in the mediation.

(3) No organization shall be designated unless its procedures, approved by the superintendent, provide that:

(i) the mediator may terminate a mediation session if the mediator determines that either the insurer's representative or the claimant is not participating in the mediation in good faith, or if even after good faith efforts, a settlement can not be reached;

(ii) the designated organization may schedule additional mediation sessions if it believes the sessions may result in a settlement;

(iii) the designated organization may require the insurer to send a different representative to a rescheduled mediation session if the representative has not participated in good faith, the fee for which shall be paid by the insurer; and

(iv) the designated organization may reschedule a mediation session if the mediator determines that the claimant is not participating in good faith, but only if the claimant pays the organization's fee for the mediation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 11, 2014.

Text of rule and any required statements and analyses may be obtained from: Brenda Gibbs, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 408-3451, email: brenda.gibbs@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301 and 2601 of the Insurance Law. Financial Services Law § 202 grants the Superintendent of Financial Services ("Superintendent") the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the Financial Services Law or any other applicable law of this state. Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent in the Insurance Law. Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices, sets forth certain acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, constitute unfair claims settlement practices, and imposes penalties if an insurer engages in these acts. Such practices include "not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear" and "compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them."

2. Legislative objectives: As noted in the Department's statement in support for the bill that added the predecessor section to § 2601, Section 40-d, to the Insurance Law in 1970 (Chapter 296 of the Laws of 1970), an insurance company's obligation to deal fairly with claimants and policyholders in the settlement of claims – indeed, its simple obligation to pay claims at all – was solely a matter of private contract law. That left the Department unable to aid consumers and relegated them solely to the courts. There was a wide variety in insurers' claims practices. Insurance Law § 2601 reflects the Legislature's concerns with insurance claims practices of insurers. In enacting that section, the Legislature authorized the Superintendent to monitor and regulate insurance claims practices.

3. Needs and benefits: On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, a number of homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Many small businesses have suffered losses of income that threaten their survival. Fair and prompt settlement of claims is critical for homeowners, many of whom who have been displaced from their homes or who are living in unsafe conditions, and for small businesses, to enable them to return to full operation and to recover their losses caused by the storm. Furthermore, many small businesses provide essential services to and a significant source of employment in the communities in which they are located.

Moreover, there are many insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Therefore, this rule creates a mediation program to facilitate the negotiation of certain insurance claims arising in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, between October 26, 2012 and November 15, 2012. An insured may request mediation for a claim for loss or damage to personal or real property (1) that the insurer has denied, (2) for which the insured disputes the insurer's settlement offer if the difference between what the insured seeks and the insurer offers is more than $1,000, or (3) that has not been settled within 45 days after the insurer received all the information the insurer needs to decide the claim. The amendment does not provide for mediation of claims for damage to motor vehicles.

Participation in the mediation program by insureds is voluntary. Participation by insurers in the mediation program is mandatory, except that an insurer is not required to participate in a mediation for any claim involving a dispute in property valuation that has been submitted to an appraisal process or that has become the subject of civil litigation, unless the insurer and insured agree otherwise. An insurer also is not required to mediate any claim for which the insurer has reason to believe or knowledge that a fraudulent insurance transaction has taken place.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule may increase costs for insurers, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers should also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

6. Paperwork: This rule does not impose any additional paperwork.

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

8. Alternatives: The Department considered making this rule applicable to the entire state. However, since the major concerns appeared to be localized, the applicability of the amendment is limited to those counties most impacted by the storm. In addition, the Department could have made the rule apply to all claims, even those that had been settled before the effective date of the rule. However, after meeting with industry trade groups and hearing their concerns, the Department modified the rule to make clear that, for claims that had already been made as of the rule's effective date, only those that were denied or unresolved as of the rule's effective date are covered by the rule. The Department also changed the rule so that it applies only to disputes where the parties's positions are $1,000 or more apart.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements. The regulation does not apply to claims made under policies issued under the national flood insurance program.

10. Compliance schedule: Insurers will be required to comply with this rule upon the Superintendent's filing the rule with the Secretary of State.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers authorized to do business in New York State, none of which fall within the definition of a "small business" as found in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business" because no insurer is both independently owned and has fewer than 100 employees.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at authorized insurers, which are not local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: "Rural areas," as used in State Administrative Procedure Act ("SAPA") § 102(10), means counties within the state having less than 200,000 population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of 200,000 or greater population, "rural areas" means towns with population densities of 150 persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein. While insurers affected by this rule may be headquartered in rural areas, the rule itself only applies within the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange. None of these counties is a rural area, and the Department of Financial Services ("Department") does not believe that there are any towns within any of those counties that would be considered to be rural areas within the SAPA definition.

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule would not impose any additional reporting or recordkeeping requirements. However, the rule would impose other compliance requirements on insurers that may be headquartered in rural areas by requiring insurers to participate in mediation sessions when an insured with a claim subject to the rule requests mediation of his or her claim.

It is unlikely that professional services would be needed in rural areas to comply with this rule.

3. Costs: The rule may result in additional costs to insurers headquartered in rural areas, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers may also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

4. Minimizing adverse impact: The Department considered the approaches suggested in SAPA § 202-bb(2) for minimizing adverse economic impacts. Because the public health, safety, or general welfare has been endangered, establishment of differing compliance or reporting requirements or timetables based upon whether or not the damage occurred in a rural area is not appropriate. However, the rule applies only in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, and thus the impact of the rule on rural areas is minimized, since none of those counties are rural areas.

5. Rural area participation: Public and private interests in rural areas have had a continual opportunity to participate in the rule making process since the first publication of the emergency measure in the State Register on March 13, 2013, which was published again in the State Register on March 5, 2014. The emergency measure also has been posted on the Department's website continually since March 13, 2013.

Job Impact Statement

The Department of Financial Services does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities. This rule provides insureds with open or denied claims for loss or damage to personal and real property, except

damage to automobiles, arising in New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange counties between October 26, 2012 and November 15, 2012, with an option to participate in a mediation program to facilitate the negotiation of their claims with their insurers.

Office of Mental Health

NOTICE OF ADOPTION

Restraint and Seclusion

I.D. No. OMH-06-14-00004-A
Filing No. 415
Filing Date: 2014-05-14
Effective Date: 2014-06-04

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

Action taken: Amendment of Parts 27, 526 and 587 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.19 and 33.04; 42 CFR sections 482.13, 483.356, 483.358, 483.360, 483.362, 483.364, 483.366, 483.368, 483.370, 483.372, 483.374 and 483.376

Subject: Restraint and seclusion.

Purpose: Update regulations governing use of restraint and seclusion in facilities operated or licensed by the Office of Mental Health.

Substance of final rule: The Office of Mental Health (OMH) is now adopting as final amendments to 14 NYCRR Part 27 (Quality of Care and Treatment), Part 526 (Quality of Care and Treatment) and Part 587 (Operation of Outpatient Programs). This rule amends Section 27.2 by removing outdated definitions of "restraint and seclusion"; repeals Section 27.7 (Restraint and Seclusion); amends Section 526.1 (Background and Intent), Section 526.2 (Legal base) and Section 526.3 (Applicability), adds a new Section 526.4 (Restraint and Seclusion) governing facilities under the jurisdiction of OMH; and amends Section 587.6 (Organization and Administration section of Operation of Outpatient Programs). A previous rule making filed by the Office for People with Developmental Disabilities superseded the application of 14 NYCRR Part 27 to its facilities (except with respect to sections pertaining to an integrated residential community) by replacing Part 27 with 14 NYCRR Part 633.

Specifically, the amendments:

- Update the "background and intent" provisions of 14 NYCRR Part 526 to reflect new "person-first" language, and to set forth the intent of OMH with respect to the use of restraint and seclusion as emergency interventions in facilities under its jurisdiction;
- Amend the "legal base" provisions to more comprehensively reflect the agency's statutory authority with respect to quality of care, and to include applicable references to federal regulations governing restraint and seclusion;
- Update provisions governing the definitions and use of restraint and seclusion, reflecting current State statutory authority and incorporating, as appropriate, applicable federal Centers for Medicare and Medicaid regulations;
- Implement the requirements of Mental Hygiene Law Section 33.04 that orders for restraint and seclusion must be written by a physician, after examination, or if the physician is unavailable, by the most senior, qualified staff member present, by permitting acceptance of a verbal order of the physician, followed by confirmation of the order by the physician in writing within 30 minutes (and in no event beyond an hour);
- Require monitoring/documentation of the patient's condition during the use of restraint or seclusion;
- Prohibit the simultaneous use of mechanical restraint and seclusion;
- Require order renewals to be signed after evaluation by physician and at least every 4 hours for adults; 1 hour for children 9-17 years and ½ hour for children under 9 years;
- Incorporate the federal requirement of notice to parents or guardians when restraint or seclusion is used at residential treatment facilities for children;
- Require facilities to conduct post-event analysis and debriefing activities by staff and patients to identify preventive measures that may be implemented in the future;
- Clarify that certain actions, when performed as defined in the regulation, do not constitute "restraint" or "seclusion," i.e. "time out", "mechanical support", and "physical escort;" and
- Clarify that outpatient programs licensed by the Office of Mental Health shall not use restraint as a treatment intervention or in response to a crisis situation.

OMH has made several non-substantive changes to the final adopted rule. They are as follows:

- Replaced the terms, "behavioral management" with "management of violent or self-destructive behavior" and "seclusion and restraint" with "restraint and seclusion" to clarify intent and improve readability in Section 526.1 "Background and intent" and Section 526.4 "Restraint and seclusion."
- Added references to federal regulations in Section 526.2 "Legal base" and Section 526.4 "Restraint and seclusion" as suggested by one commenter to restate the need for providers to be in compliance with applicable federal requirements. The regulation had already included references to federal regulations in the proposal; this addition is a restatement only.
- Restored language found in existing 14 NYCRR Section 27.7(b) with respect to seclusion use for persons with developmental disabilities. This language, with limited amendments to update it, has been included in Section 526.4. Specifically, the language clarifies that seclusion shall not be used with persons with a sole diagnosis of a developmental disability, and seclusion may be used for persons with a dual diagnosis of mental illness and a developmental disability, provided such persons are under one-to-one constant visual observation while in seclusion, and all other provisions of Section 526.4 are met.
- Eliminated scattered references to OMH guidelines in Section 526.4 and consolidated them in a new subdivision (e) of Section 526.4. This provision clarifies that OMH will issue guidelines, post them on its public website and assist providers with compliance and in achieving their restraint and seclusion goals.
- Amended provisions in Section 526.4 in response to a commenter's concern regarding the potential burden placed on facilities by notification requirements if it is expected that restraint or seclusion will be required beyond a specific amount of time. The final rule requires notification and consultation with the facility medical director or director of psychiatry, who can appoint a designee to fulfill this function. Certain requirements regarding specific points to be addressed in the consultation have been eliminated to address this concern as well.
- Added language in Section 526.4 to clarify the requirements regarding assessment frequency, and to clarify the professional disciplines of the individuals conducting the assessment.
- Added language in Section 526.4 clarifying that the use of restraint and seclusion in comprehensive psychiatric emergency programs must be utilized in accordance with 14 NYCRR Part 590, as well as State law and federal regulations. This is not a new requirement; it merely codifies what is already in statute.
- Clarifying language has been added to Section 526.4 with respect to the use of physical force when necessary to protect the life and limb of any person. OMH has clarified that the purpose of the use of force in a situation such as this is limited to restoring safety.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 526.1(b), 526.2(h), 526.4(b), (c) and (e).

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

Revised Regulatory Impact Statement

A revised regulatory impact statement (RIS) is not included with this notice as the changes made to the final adopted rule do not necessitate a change to the RIS. The changes are non-substantive and serve to improve readability and provide clarification with respect to the expectations of the Office of Mental Health regarding the use of restraint and seclusion.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not included with this notice as the changes made to the final adopted rule do not necessitate a change to this document. The changes are non-substantive and serve to improve readability and provide clarification with respect to the expectations of the Office of Mental Health regarding the use of restraint and seclusion. The amendments to 14 NYCRR Parts 27, 526 and 587 will not have an adverse economic impact upon small businesses or local governments.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis (RAFA) is not included with this notice as the changes made to the final adopted rule do not necessitate a change to the RAFA. The changes are non-substantive and serve to improve readability and provide clarification with respect to the expectations of the Office of Mental Health regarding the use of restraint and seclusion. The amendments to 14 NYCRR Parts 27, 526 and 587 will not impose any adverse economic impact on rural areas.

Revised Job Impact Statement

A revised Job Impact Statement is not included with this notice as the changes made to the final adopted rule are not substantive. These changes serve to improve readability and provide clarification with respect to the Office of Mental Health regarding the use of restraint and seclusion. As is evident from the subject matter, the amendments to 14 NYCRR Parts 27, 526, and 587 will not have any impact on jobs and employment opportunities.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted

Assessment of Public Comment

The agency received six letters of comment in response to the proposed rule regarding restraint and seclusion. The comments are addressed below:

Comment: An international training organization submitted comments requesting that the regulations be amended to define, (and contain provisions regarding the use of), ''transitional holds.'' This intervention is described as a brief physical restraint of an individual face-down for the purpose of quickly and effectively gaining physical control of that individual or prior to transport to enable the individual to be transported safely. The organization recommended that these holds only be applied by staff who have current training, including information regarding how to recognize and respond to signs of distress.

Response: OMH does not support the inclusion of ''transitional holds'' as a permitted intervention in the regulations. To do so would essentially create an exception to the prohibition against prone restraint, albeit for a ''limited minimal amount of time.'' The training organization did not identify what a "limited minimal amount of time" might be, and, in any event, it is unclear how OMH could definitively identify the appropriate or maximum length of time that a transitional hold could be used. As written, these regulations unequivocally prohibit the use of prone (face down) restraint due to its direct relationship to positional asphyxia, which can lead to death. To avoid this result, there must be no weight placed on the restrained person's back while he or she is in a face down position. Although the organization indicates this intervention would only be used by trained staff, there is no assurance that such trained staff are proficient. OMH is not accepting this recommendation.

Comment: The above-referenced organization also notes that the regulations require providers to utilize training and education programs that have been approved by OMH, but points out that many states require the use of approved training organizations that are nationally-recognized and offer evidence-based programs.

Response: This comment does not require an amendment to the regulations. If such an organization offers training that is consistent with OMH standards (as determined by OMH), it could be utilized.

Comment: One commenter recommended cross referencing, or incorporating, specific Center for Medicare and Medicaid Services' (CMS) requirements into the text of the regulation.

Response: The regulation already includes cross references to CMS requirements in the Legal Base provisions; however, OMH is in agreement with this comment and has clarified the regulations to restate the need for providers to be in compliance with applicable Federal requirements.

Comment: A commenter requested that OMH extend Federal provisions applicable to non-hospital psychiatric treatment programs for persons under age 21 to hospitals.

Response: OMH has not extended Federal provisions applicable to non-hospital psychiatric treatment programs for persons under age 21 to hospitals as the impact of doing so has not been evaluated.

Comment: A commenter expressed opposition to the repeal of 14 NYCRR § 27.7(b) pertaining to individuals with dual diagnosis served in OMH facilities. Specifically, it was requested that language currently found in in this section, which reads "seclusion, as defined in section 27.2(e) of this Part, shall not be used with used with the persons(sic) with a sole diagnosis of mental retardation or a sole diagnosis of any other developmental disability."

Response: OMH has accepted this recommendation and has restored language found in 14 NYCRR § 27.7(b) to the proposed rule, with limited amendment to update language.

Comment: One commenter expressed concern that language in the proposed regulation that states "in situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed, nothing in this Section shall be construed to prohibit the use of reasonable physical force when necessary to protect the life and limb of any person." It was explained that the proposed language might be misconstrued as an implicit authorization for the use of physical force in the case of an emergency.

Response: OMH is not accepting this recommendation. This provision is essential to ensure that staff do not avoid taking necessary action in circumstances when a person's life is in danger, and there is no other alternative, out of concern that they have no doctor's order to do so. This should be an unusual and rare occurrence. OMH has sought to clarify this provision by indicating that the purpose of the use of force in a situation such as this is limited to "restoring safety."

Comment: One commenter strongly recommended the prohibition of restraint and seclusion in residential treatment facilities for children and youth (RTF), noting the regulations prohibit its use in residential treatment facilities for adults. Assuming this recommendation is not accepted, however, the commenter asked that RTFs be required to notify parents or guardians that restraint or seclusion had been initiated "within one hour" of such initiation, as opposed to "as soon as possible," as currently provided in the regulation.

Response: OMH is not accepting these recommendations. While elimination of restraint and seclusion in RTFs, which are a subclass of hospitals (see Mental Hygiene Law Section 1.03) is the inspiration behind these regulatory revisions, at the current time, it is an authorized intervention that is utilized in the RTF system. It is also subject to federal regulations as a term and condition of Medicaid reimbursement.

Comment: Several commenters objected to references to guidelines of the Office throughout the regulation, and suggested that by incorporating them by reference into the regulations, they are enforceable against providers. The comments recommended that the proposed regulations be withdrawn and revised such that federal requirements are to be incorporated by reference into State regulations.

Response: OMH cannot incorporate federal regulations into State regulations, because in some instances, State law is more restrictive than federal regulations governing restraint and seclusion. Instead, OMH has based its own guidelines heavily on federal implementation guidance that has been already issued. These guidelines have been supplemented with additional "best practice" information to assist regulated parties in complying with these regulations, and to serve as technical assistance as providers move toward achieving the goal of reducing the use of seclusion and restraint. This additional information is not enforceable against regulated parties, but is intended to help explain and identify compliance strategies. However, OMH removed reference to the guidelines in various provisions throughout the regulations and consolidated them into a single provision that indicates OMH will issue guidelines, and post them on its public website, to assist providers with compliance and in achieving their restraint and seclusion reduction goals.

Comment: One commenter objected to the timeframes established in the proposed regulations that differ from the standards of CMS and the Joint Commission, which will cause confusion in general hospital settings. The commenter requests restraint/seclusion durations up to the following limits: 4 hours for adults (consistent with proposed regulations); 2 hours for children/adolescents age 9-17 (proposed regulations provide 1 hour); and 1 hour for children under age 9 (proposed regulations provide 30 minutes).

Response: OMH is not accepting this recommendation. Based upon its statutory authority to establish standards of care in facilities under its jurisdiction, OMH believes limiting restraint and seclusion duration for minors is in the best interest of persons served in the public mental health system. Should an exceptional circumstance present wherein a child needed to be restrained or secluded beyond a 30 minute (to 1 hour) or 1 hour (to 2 hour) limit, there are permitted procedures to do so.

Comment: One commenter objected to the requirement that the Facility Director and Medical Director be notified if it is expected that restraint or seclusion will be required beyond 2 hours for adults, 1 hour for children and adolescents ages 9 to 17, or 30 minutes for children under age 9. The commenter objected to the potential burden this could place upon facilities.

Response: Although this provision is being retained in the proposed regulations, OMH has modified it to minimize the perceived burden on facilities. The provision is being retained because it is the goal of OMH to create a violence and coercion-free environment in the NY public mental health system and to significantly reduce the use and duration of restraint and seclusion by employing alternative strategies. The 4 hour maximum time limit for orders of restraint or seclusion, although currently permitted under New York law and federal regulations, is nonetheless clearly inconsistent with this goal. Involving senior management in decisions to continue restraint or seclusion for longer than 2 hours for adults, 1 hour for children or adolescents ages 9 to 17, and 30 minutes for children under the age of 9, (i.e, "witnessing") is more in concert with this initiative, and thus is required by these regulations. "Witnessing" by leadership sends a very clear message that restraint and seclusion beyond these time frames is a very serious matter, and should be extremely rare occurrences. However, to address the concern about burden, the proposed regulations have been amended to require notification and consultation with the facility medical director or director of psychiatry, who can appoint a designee to fulfill this function. OMH has also eliminated requirements detailing specific points that must be addressed in the consultation.

Comment: One commenter objected to the inclusion of "drug used as a restraint" as a form of restraint.

Response: OMH is not accepting this recommendation. Federal CMS regulations require that if medications are used in such a way that they "disable," rather than "enable" a patient from actively participating in treatment, they must be considered a restraint and must follow the procedures governing the use of restraint. OMH does not consider the use of medication as a restraint to be a standard practice. However, there may be emergency situations where the degree of harm posed by a patient's behavior is such that the primary intent of a physician in ordering a medication is to restrict the ability of the patient to engage in the dangerous behavior, thereby minimizing harm to the patient and others. When medication is used in this manner, there must be a STAT (immediate one-time) physician's order for the medication, and the use of the medication must also be identified as a restraint.

As with any use of restraint or seclusion, staff must conduct a comprehensive patient assessment to determine the need for other types of interventions before using a drug or medication as a restraint can be considered. For example, a patient may be agitated due to pain or adverse reaction to an existing drug or medication or other unmet need or concern. It is important to note that the use of a drug or medication as a restraint does not supersede a patient's right to object to medication as otherwise set forth in Section 527.8 of Title 14 NYCRR.

Comment: A comment was received regarding the use of restraint and seclusion in comprehensive psychiatric emergency programs.

Response: OMH agrees with the commenter that language should be included in the regulation. Language has been added to clarify that the use of restraint and seclusion in comprehensive psychiatric emergency programs must be utilized in accordance with 14 NYCRR Part 590, as well as State law and federal regulations. This non-substantive change is not a new requirement; it simply codifies what already exists in statute.

Comment: One commenter noted that the proposed regulations do not apply to secure treatment facilities for the care and treatment of dangerous sex offenders, (Article 10 facilities) and indicated that residents of those facilities should not be subjected to restraint and seclusion without regulatory oversight and defined standards of care.

Response: OMH has issued defined standards of care for the employment of restraint and seclusion in State operated psychiatric facilities, including Article 10 facilities. These standards are codified in OMH Official Policy directive PC-701, available on OMH's public website: http://www.omh.ny.gov/omhweb/policymanual/pc701.pdf

NOTICE OF ADOPTION

Prevention of Influenza Transmission

I.D. No. OMH-08-14-00014-A
Filing No. 416
Filing Date: 2014-05-15
Effective Date: 2014-06-04

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

Action taken: Addition of Part 509 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

Subject: Prevention of Influenza Transmission.

Purpose: Require unvaccinated personnel to wear surgical masks in certain OMH-licensed or operated psychiatric centers during flu season.

Text or summary was published in the February 26, 2014 issue of the Register, I.D. No. OMH-08-14-00014-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

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

OMH published responses to comments received on this proposed rule when the third Notice of Emergency Adoption was filed with the Department of State on April 28, 2014. The assessment of public comment was published in the State Register on May 14, 2014. No other comments were received by the agency.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Disposition of Works of Art and Historic Objects in OPRHP Custody

I.D. No. PKR-47-13-00014-A
Filing No. 423
Filing Date: 2014-05-20
Effective Date: 2014-06-04

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

Action taken: Repeal of Part 429; and addition of new Part 429 to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8), art. 19-A, 19.13(9) and 19.29

Subject: Disposition of works of art and historic objects in OPRHP custody.

Purpose: To update OPRHP's rule on disposition of works of art and historic objects.

Text of final rule: 9 NYCRR Part 429 is repealed and a new Part 429 is adopted as follows:

PART 429. DISPOSITION OF WORKS OF ART OR HISTORIC OBJECTS

Section 429.1. Purpose.

The Office of Parks, Recreation and Historic Preservation (office) may dispose of a work of art or historic object that has been acquired by the State and is surplus to the needs of the office in accordance with the terms and conditions set forth in this Part.

Section 429.2. Determination of need.

Prior to the disposition of a work of art or historic object the commissioner shall determine based upon the recommendation of the office's division for historic preservation that it is surplus and fits one or more of the following criteria:

(a) The work of art or historic object is not relevant to the purposes, functions or interpretive goals and policies of the office;

(b) The work of art or historic object is one of several examples of a particular type or class of art or historic object in the custody of the office, and these other examples adequately fulfill the interpretive goals and policies of the office; or

(c) The work of art or historic object has deteriorated beyond usefulness or has become wholly or partially comprised of material that may be hazardous to the health or safety of staff or damaging to another work of art or historic object.

Section 429.3. Manner of disposition.

(a) Deteriorated or hazardous conditions. A work of art or historic object that has been determined to be surplus in accordance with the provisions of subdivision c of section 429.2 of this Part may be destroyed and disposed of in an environmentally-responsible manner subject to industry standards under a process known as witnessed destruction.

(b) A work of art or historic object that has been determined to be surplus in accordance with the provisions of subdivisions a or b of section 429.2 of this Part may be disposed of in the following manner, after being properly documented in accordance with the office's collections guidelines:

(1) it shall first be offered to the New York State Museum and if the State Museum fails to accept this offer within 30 days, it shall be offered to State agencies allowed to acquire, exhibit, preserve or interpret it; and if no State agency accepts this offer within 30 days it may be:

(i) donated to a public corporation;

(ii) donated to a not-for-profit corporation authorized to acquire, exhibit, preserve or interpret it;

(iii) sold for fair market value;

(iv) sold for less than fair market value provided the office makes a written justification on a case-by-case basis that it would be in the best interests of the State; or

(v) transferred to the Office of General Services with or without conditions for disposition either by public sale as provided in section 167 of State Finance Law or by private sale.

Section 429.4. Terms and conditions.

The commissioner may impose such terms or conditions upon the disposition of a work of art or historic object as the commissioner deems appropriate to encourage its conservation and preservation for the public benefit.

Section 429.5. Restrictions on disposition.

(a) A work of art or historic object shall not be disposed of under this Part within 10 years of its acquisition by the State.

(b) A work of art or historic object that is undocumented may be disposed of under this Part between 10 and 20 years after acquisition by the State provided the disposition is first approved by a court of competent jurisdiction. The office shall attempt to notify the previous owner or heirs or legal representatives, however, this requirement shall be deemed waived if the office is unsuccessful after making reasonable efforts to locate and notify such persons.

(c) A work of art or historic object that is undocumented may be disposed of under this Part without court approval 20 years or more after its acquisition by the State.

(d) If disposal of a documented work of art or historic object is inconsistent with the terms or conditions of the instrument by which title was conveyed to the State, it may, nevertheless, be disposed of under this Part provided the disposition is first approved by a court of competent jurisdiction. The office shall attempt to notify the previous owner or heirs or legal representatives, however, this requirement shall be deemed waived if the office is unsuccessful after making reasonable efforts to locate and notify such persons.

(e) A work of art or historic object determined to be surplus under subdivision c of section 429.2 may be disposed of under this Part at any time after its acquisition without court approval.

Section 429.6. Proceeds from Disposition.

Proceeds derived from the disposition of any property from the collections of the office shall be deposited into the state park infrastructure fund established pursuant to section ninety-seven-mm of the state finance law and shall be used only for the acquisition of collections or for the preservation, protection and care of the collections or both, including related capital projects.

Section 429.7. Definitions.

(a) "Deteriorated beyond usefulness" means the work of art or historic object lacks significance and is in poor physical condition or has suffered a substantial loss of integrity and has no intrinsic historic, artistic, scientific or cultural value.

(b) "Disposal" means the removal of works of art or historic objects from the office through transfer, gift or sale; or the witnessed destruction of works of art or historic objects that have deteriorated beyond usefulness or are hazardous.

(c) "Surplus" means does not support a mission of the office and does not provide any current or future public benefit.

(d) "Witnessed destruction" means two qualified staff persons from the office's division for historic preservation:

(1) document the work of art or historic object;

(2) make the appropriate finding or findings under subdivision (c) of section 429.2;

(3) determine the work of art or historic object cannot be reconstituted or does not merit extraordinary remediation or conservation efforts;

(4) witness the destruction and disposal or the transfer for disposal; and

(5) make and keep on file sworn and notarized affidavits outlining the findings, determination and process.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 429.1, 429.2, 429.3, 429.5(f) and 429.7.

Text of rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Attorney, OPRHP, Albany, NY 12238 (USPS), 625 Broadway, Albany, NY 12207 (Courier), (518) 486-2921, email: rule.making@parks.ny.gov

Revised Regulatory Impact Statement

This Regulatory Impact Statement (RIS) describes the Office of Parks, Recreation and Historic Preservation's (Office or Agency) proposed rule on the disposition of works of art or historic objects that do not meet the needs of the Office's collections. In the context of this rule "disposition" or "disposal" involves the removal of works of art or historic objects from the Office's collections through transfer to another agency, gift or sale; or the witnessed destruction of deteriorated or hazardous items under longstanding controls.

Statutory authority: Parks, Recreation and Historic Preservation Law (PRHPL or Parks Law), Sections 3.09(8), Article 19-A generally and Sections 19.13, 19.29 authorize OPRHP to adopt regulations necessary to carry out the functions of the Office and provide for the disposition of works of art or historic objects in the Office's collections.

Legislative objectives: Updating this rule confirms the Office's authority to dispose of surplus items in its collections that:

- after twenty years are no longer relevant to interpretation goals and policies of the Agency or duplicate other items in its collections;
- have deteriorated beyond usefulness; or
- pose a health hazard to employees.

The rule streamlines the notification process so that appropriate state agencies have the opportunity to take possession of the items slated for disposition. It also updates regulatory disposition criteria to conform to statutory changes in PRHPL § 19.29, and reduces the Agency's substantial costs from continuing to care for or house items that do not meet the needs of its collections.

Needs and benefits: OPRHP preserves, manages and develops its historic collections to educate New Yorkers about the State's historic resources through a system of state historic sites and historic parks. The Agency has an extensive collections protocol for managing works of art and historic objects. This protocol is derived from the Parks Law, the existing regulation and museum guidelines. Works of art or historic objects held by OPRHP for more than twenty years that have no relevance to its collections and interpretation policies or duplicate other items, or those that have deteriorated beyond reasonable usefulness or are hazardous may be disposed of without court order under PRHPL § 19.29.

The controlling statute recognizes a widely accepted management practice shared by all institutions that maintain and use historic collections. Updating disposition protocols will allow OPRHP to focus its limited resources on existing collections that are significant to its mission.

The existing rule at 9 NYCRR Part 429 that is being updated worked effectively for objects that were acquired with instruments of title, however, it failed to address the large number of undocumented items that were found in collection and came under OPRHP's jurisdiction. Prior to 1977 OPRHP accessioned and held undocumented items. And, unlike museums, it accepted and recorded them as collection objects. Information about the items was numbered and added to an inventory. Some of these older items have also been damaged beyond repair or pose a health hazard for employees. The rule formalizes the Office's collections protocol for disposing items where continued retention is unnecessary, involves labor intensive conservation treatment or expensive warehousing costs.

Initial staff requests for disposal of surplus items to be transferred or donated or sold are submitted to its collections committee. Sufficient justification explaining why the object is either not historically significant to the Office or why it cannot be reasonably used for exhibit or interpretation must be established. The collections committee must approve the disposal by a majority vote at two meetings. The Director of the Bureau of Historic Sites within the Division for Historic Preservation then submits the requests for disposal to OPRHP Executive Staff for approval.

Since January 1977 the Office has not accepted undocumented items. The items intended to be transferred, donated or sold under the rule have been managed for more than twenty years. Previous owners and the means by which these items came into the Office's custody are mostly unknown to OPRHP staff. The proposed rule acknowledges that through its long term care and custody the Office established jurisdiction over these items, and that after twenty years it may appropriately dispose of them.

There is a remote risk that an owner of an undocumented item that has been in the State's possession for twenty years or more could attempt to claim ownership after an item has been disposed of without court approval. That claim, however, would be subject to a rebuttable presumption that the Office had valid title because the item was not originally loaned to the State, the item had been accepted, numbered and recorded as a part of the Office's inventory and the State enjoyed undisturbed custody for at least twenty years. (See, Maire C. Malaro, A Legal Primer on Managing Museum Collections, 391 (3rd. ed. 2012)). The Office retains the discretion to provide notice of the disposal of any of these items to the public in the State Register on a case-by-case basis.

Under the rule, undocumented works of art or historic objects may not be disposed of within ten years of acquisition, and may not be disposed of between ten to twenty years of acquisition without court approval.

Finally, the rule's provisions for witnessed destruction of items that have deteriorated beyond usefulness or are hazardous or unsafe, confirm the Office's existing collections committee practice.

Cost-benefit analysis: The continued retention of items eligible for disposal under PRHPL § 19.29 has significant costs for the State. The items require secure and adequate storage space with proper temperature and light controls and access for staff. And, retention of these items also generally requires the Office to undertake reasonable conservation efforts.

Local government mandates: The proposed rule does not affect local governments.

Paperwork: The rule will require staff to prepare, document and file paperwork to comply with the disposition procedure.

Duplication: None.

Alternatives: There are no viable alternatives to updating this rule to conform to the existing proper and reasonable collections management policy authorized by the Parks Law.

Federal standards: None.

Compliance schedule: The rule will take effect on the date the Notice of Adoption is published in the State register.

Revised Regulatory Flexibility Analysis

The proposed rule at 9 NYCRR Part 429 updates the Office of Parks, Recreation and Historic Preservation's (OPRHP) process for disposition of works of art or historic objects. It involves OPRHP's collection management practices and, therefore, will not affect small businesses or local governments or recordkeeping requirements.

Revised Rural Area Flexibility Analysis

The proposed rule at 9 NYCRR Part 429 updates the Office of Parks, Recreation and Historic Preservation's (OPRHP) process for disposition of works of art or historic objects. It involves OPRHP's collection management practices and, therefore, will not affect small businesses or local governments or recordkeeping requirements in rural areas.

Revised Job Impact Statement

The proposed rule at 9 NYCRR 429 on disposition of works of art or historic objects involves the Office of Parks Recreation and Historic Preservation's collections management policies and would not affect jobs or employment opportunities.

Initial Review of Rule

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

Assessment of Public Comment

The Office of Parks, Recreation and Historic Preservation ("OPRHP" or "Office") received one comment from the public on its proposed rule to adopt 9 NYCRR Part 429 which addresses the disposition of works of art and historic objects in the Office's collections. The comment supported the process established by the rule but asked the Office to clarify the terms to avoid confusion between the types of accessioning/deaccessioning procedures that museums and historical societies use that differ somewhat from OPRHP's state agency procedures outlined generally at Parks, Recreation and Historic Preservation Law, Article 19-A, and, in particular, § § 19.13(9) and 19.29. OPRHP accommodated the comment and removed the term "deaccession" from the rule and replaced it with the term "disposition."

Additionally, the comment requested OPRHP clarify the rule further by adding definitions for the following terms: deteriorated beyond usefulness, disposal, surplus and witnessed destruction. Finally, the comment indicated additional changes were required to the Regulatory Impact Statement (RIS) to include information about how the undocumented items in OPRHP's collections were inventoried and added to the Office's collections (i.e., found in collection). The Office discontinued the practice of acquiring undocumented items in January 1977 when it established its collections committee in the Division for Historic Preservation. The comment also highlighted the need for other non-substantive and technical clarifying changes to the Text and the RIS.

Public Service Commission

EMERGENCY RULE MAKING

Readoption of the February 20, 2014 Commission Order

I.D. No. PSC-10-14-00002-E

Filing Date: 2014-05-14

Effective Date: 2014-05-14

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

Action taken: On 5/8/14, the PSC readopted the emergency rule requiring gas companies in New York State to complete gas facility risk assessments in Order Requiring Risk Assessments and Remediation of New York Gas Facilities (2/20/14).

Statutory authority: Public Service Law, sections 65 and 66

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

Specific reasons underlying the finding of necessity: This action was taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) § 202(6). The re-adoption is necessary to address the comments received pursuant to SAPA 202(1), which may require an amendment of the Order Requiring Risk Assessments and Remediation of New York Gas Facilities (issued and effective February 20, 2014) (Risk Assessment Order) when it is made permanent. The comments seek clarification of certain requirements in the Risk Assessment Order while the order's primary requirement -- that gas utilities conduct a risk assessment of their gas facilities -- should continue for the preservation of the health, safety and general welfare pursuant to SAPA § 202(6).

Subject: Readoption of the February 20, 2014 Commission Order.

Purpose: Readoption to continue the effectiveness of Commission Order issued February 20, 2014.

Substance of emergency rule: The Commission, on May 8, 2014, readopted the emergency rule, for an additional 60 days, to address comments received pursuant to SAPA § 202(1) on the Order Requiring Risk Assessments and Remediation of New York Gas Facilities, issued February 20, 2014.

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. PSC-10-14-00002-EP, Issue of March 12, 2014. The emergency rule will expire July 12, 2014.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York, 12223-1350, (518) 486-6530, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

(11-G-0565EA1)

NOTICE OF ADOPTION

Approving Erie's Petition on Qualifying Facility Status

I.D. No. PSC-25-13-00015-A

Filing Date: 2014-05-15

Effective Date: 2014-05-15

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

Action taken: On 5/8/14, the PSC adopted an order finding that Erie Boulevard HydroPower, L.P. (Erie) is not subject to lightened regulation and is exempt from regulation for small hydro facilities.

Statutory authority: Public Service Law, sections 2(2-c), (2-d), (3), (4), (13), 5(1)(b), 64, 65, 66, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Approving Erie's petition on qualifying facility status.

Purpose: To approve Erie's petition on qualifying facility status.

Substance of final rule: The Commission, on May 8, 2014, adopted an order approving Erie Boulevard HydroPower, L.P.'s (Erie) petition finding that Erie is not subject to lightened regulation and is within the exemption from regulation for small hydro facilities, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0234SA1)

NOTICE OF ADOPTION

Approval of Petition of Stratford Tower, LLC to Submeter Electricity at 1340 Stratford Avenue, Bronx, NY

I.D. No. PSC-03-14-00008-A
Filing Date: 2014-05-14
Effective Date: 2014-05-14

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

Action taken: On 5/8/14, the PSC adopted an order approving the petition of Stratford Tower, LLC to submeter electricity at 1340 Stratford Avenue, Bronx, NY, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Approval of petition of Stratford Tower, LLC to submeter electricity at 1340 Stratford Avenue, Bronx, NY.

Purpose: To approve the petition of Stratford Tower, LLC to submeter electricity at 1340 Stratford Avenue, Bronx, NY.

Substance of final rule: The Commission, on May 8, 2014, adopted an order approving the petition of Stratford Tower, LLC to submeter electricity at 1340 Stratford Avenue, Bronx, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0466SA1)

NOTICE OF ADOPTION

Approval of Petition Fort Place Cooperative, Inc. to Submeter Electricity at 50 Fort Place, Staten Island, New York

I.D. No. PSC-06-14-00006-A
Filing Date: 2014-05-14
Effective Date: 2014-05-14

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

Action taken: On 5/8/14, the PSC adopted an order approving the petition of Fort Place Cooperative, Inc. to submeter electricity at 50 Fort Place, Staten Island, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Approval of petition Fort Place Cooperative, Inc. to submeter electricity at 50 Fort Place, Staten Island, New York.

Purpose: To approve the petition of Fort Place Cooperative, Inc. to submeter electricity at 50 Fort Place, Staten Island, New York.

Substance of final rule: The Commission, on May 8, 2014, adopted an order approving the petition of Fort Place Cooperative, Inc. to submeter electricity at 50 Fort Place, Staten Island, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0009SA1)

NOTICE OF ADOPTION

Approval of Petition Hanover Court Mutual Housing Corp. to Submeter Electricity at 92-31 57th Avenue, Elmhurst, New York

I.D. No. PSC-06-14-00007-A
Filing Date: 2014-05-15
Effective Date: 2014-05-15

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

Action taken: On 5/8/14, the PSC adopted an order approving the petition of Hanover Court Mutual Housing Corp. to submeter electricity at 92-31 57th Avenue, Elmhurst, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Approval of petition Hanover Court Mutual Housing Corp. to submeter electricity at 92-31 57th Avenue, Elmhurst, New York.

Purpose: To approve the petition of Hanover Court Mutual Housing Corp. to submeter electricity at 92-31 57th Avenue, Elmhurst, New York.

Substance of final rule: The Commission, on May 8, 2014, adopted an order approving the petition of Hanover Court Mutual Housing Corp. to submeter electricity at 92-31 57th Avenue, Elmhurst, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0010SA1)

NOTICE OF ADOPTION

Approval of Petition of Rudin Management Company, Inc. to Submeter Electricity at 130-155 11th St. and 140-160 West 12th St

I.D. No. PSC-07-14-00009-A
Filing Date: 2014-05-15
Effective Date: 2014-05-15

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

Action taken: On 5/8/14, the PSC adopted an order approving the petition of Rudin Management Company, Inc. to submeter electricity at 130-155 11th Street and 140-160 West 12th Street, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Approval of petition of Rudin Management Company, Inc. to submeter electricity at 130-155 11th St. and 140-160 West 12th St.

Purpose: To approve the petition of Rudin Management Company, Inc. to submeter electricity at 130-155 11th St. and 140-160 West 12th St.

Substance of final rule: The Commission, on May 8, 2014, adopted an order approving the petition of Rudin Management Company to submeter electricity 130-155 11th Street and 140-160 West 12th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-E-0583SA1)

NOTICE OF ADOPTION

Approval of Petition Dock Street Rental, LLC to Submeter Electricity at 60 Water Street, Brooklyn, New York

I.D. No. PSC-07-14-00014-A
Filing Date: 2014-05-15
Effective Date: 2014-05-15

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

Action taken: On 5/8/14, the PSC adopted an order approving the petition of Dock Street Rental, LLC to submeter electricity at 60 Water Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Approval of petition Dock Street Rental, LLC to submeter electricity at 60 Water Street, Brooklyn, New York.

Purpose: To approve the petition of Dock Street Rental, LLC to submeter electricity at 60 Water Street, Brooklyn, New York.

Substance of final rule: The Commission, on May 8, 2014, adopted an order approving the petition of Dock Street Rental, LLC to submeter electricity at 60 Water Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-E-0029SA1)

NOTICE OF ADOPTION

Authorizing the Village of Pelham to Charge All Customer Classes a Surcharge for Infrastructure Costs

I.D. No. PSC-07-14-00020-A
Filing Date: 2014-05-14
Effective Date: 2014-05-14

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

Action taken: On 5/8/14, the PSC adopted an order approving the petition of the Village of Pelham authorizing a surcharge to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes within the Village.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

Subject: Authorizing the Village of Pelham to charge all customer classes a surcharge for infrastructure costs.

Purpose: To authorize the Village of Pelham to charge all customer classes a surcharge for infrastructure costs.

Substance of final rule: The Commission, on May 8, 2014, adopted an order authorizing the Village of Pelham to collect a surcharge from all customers across all customer classes located in the municipality to recover costs for infrastructure maintenance and access, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-W-0027SA1)

NOTICE OF ADOPTION

Authorizing the Village of Bronxville to Charge All Customer Classes a Surcharge for Infrastructure Costs

I.D. No. PSC-11-14-00010-A
Filing Date: 2014-05-14
Effective Date: 2014-05-14

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

Action taken: On 5/8/14, the PSC adopted an order approving the petition of the Village of Bronxville authorizing a surcharge to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes within the Village.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

Subject: Authorizing the Village of Bronxville to charge all customer classes a surcharge for infrastructure costs.

Purpose: To authorize the Village of Broxville to charge all customer classes a surcharge for infrastructure costs.

Substance of final rule: The Commission, on May 8, 2014, adopted an order authorizing the Village of Bronxville to collect a surcharge from all customers across all customer classes located in the municipality to recover costs for infrastructure maintenance and access, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-W-0073SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Establishing CSPI Targets and Associated Revenue Adjustments

I.D. No. PSC-22-14-00010-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, deny or modify, in whole or part, the petition filed by Corning Natural Gas Corporation proposing that its CSPI targets and associated revenue adjustments be established.

Statutory authority: Public Service Law, section 65

Subject: Petition for establishing CSPI targets and associated revenue adjustments.

Purpose: To consider the request of Corning Natural Gas Corp. proposing its CSPI targets and associated revenue adjustments.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, a request by Corning Natural Gas Corporation to establish certain threshold and negative revenue adjustment levels for the company's Customer Satisfaction Performance Index. The Commission may take such further action as deemed warranted.

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.

(11-G-0280SP6)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Area Code Overlay

I.D. No. PSC-22-14-00012-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 grant or deny, in whole or in part a petition filed by Neustar Inc., in its role as the North American Numbering Plan Administrator to add a new area code within or adjacent to the current 631 area code.

Statutory authority: Public Service Law, section 97(2)

Subject: Area Code Overlay.

Purpose: To authorize an area code overlay in the current 631 area code.

Substance of proposed rule: The Commission is considering whether to grant or deny, in whole or in part a petition filed by Neustar Inc., in its role as the North American Numbering Plan Administrator to add a new area code within or adjacent to the current 631 area code that serves parts of Long Island. Neustar's proposal would overlay a new area code over the current 631 area code, and would result in required 10-digit dialing for those with numbers in the current 631 and new area code. The reason for Neustar's request is a projection that indicates the current 631 area code will be exhausted in the first quarter of 2016. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may take such further action as deemed warranted.

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.

(14-C-0182SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Transfer and Merge Systems, Franchises and Assets

I.D. No. PSC-22-14-00013-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 grant, deny, modify or condition, in whole or in part, the merger petition of Comcast and Time Warner Cable requesting approval to transfer telephone and cable systems, franchises and assets.

Statutory authority: Public Service Law, sections 99(2), 100(1) and 222

Subject: Petition to transfer and merge systems, franchises and assets.

Purpose: To consider the Comcast and Time Warner Cable merger and transfer of systems, franchises and assets.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Comcast Corporation (Comcast) and Time Warner Cable Inc. (Time Warner Cable) seeking approval under Public Service Law (PSL) §§ 99, 100 and 222 to transfer certain Time Warner Cable telephone systems, cable systems, franchises and assets to Comcast. Under the proposed transaction, Comcast has entered into an agreement with Time Warner Cable whereby Comcast will acquire 100 percent of Time Warner Cable's equity in exchange for Comcast Class A shares. Under the proposed transaction Comcast plans to retain all of Time Warner Cable's existing assets in New York State. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may take such further action as deemed warranted.

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) 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.

(14-M-0183SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Gas Supplier Refund Credits

I.D. No. PSC-22-14-00014-P

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

Proposed Action: The Commission is considering a filing by Orange and Rockland Utilities, Inc. to make revisions to General Information Section 12.2, Monthly Gas Adjustment, contained in P.S.C. No. 4 — Gas to become effective August 20, 2014.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas supplier refund credits.

Purpose: To make revisions to the General Information Section 12.2 Monthly Gas Adjustment regarding gas supplier refund credits.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. (O&R) to make revisions to its General Information Section No. 12.2, Monthly Gas Adjustment, contained in P.S.C. No. 4 - Gas. O&R proposes to add a process for determining and reconciling supplier refund credits applicable to firm customers. Credits associated with such refunds will be included in the Monthly Gas Adjustment (MGA) applicable to Service Classification (SC) No. 1 – Residential and Space Heating, SC No. 2 – General Service and when applicable, in the MGA for SC No. 6 – Firm Transportation customers. The proposed filing has an effective date of August 20, 2014. The Commission may also consider other 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.
(14-G-0181SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-09-14-00001-A
Filing No. 419
Filing Date: 2014-05-19
Effective Date: 2014-05-19

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2014 through June 30, 2014.

Text or summary was published in the March 5, 2014 issue of the Register, I.D. No. TAF-09-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-22-14-00006-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2014 through September 30, 2014.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxv) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxiv) April-June 2014					
16.0	24.0	42.4	16.0	24.0	40.65
(lxxv) July-September 2014					
16.0	*24.0*	*42.4*	*16.0*	*24.0*	*40.65*

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.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, 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.

Urban Development Corporation

NOTICE OF ADOPTION

New York State Innovation Venture Capital Fund

I.D. No. UDC-13-14-00001-A
Filing No. 426
Filing Date: 2014-05-20
Effective Date: 2014-06-04

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

Action taken: Addition of Part 4254 to Title 21 NYCRR.

Statutory authority: L. 1968, ch. 174, section 9-c; L. 2013, ch. 59, part JJ, section 7

Subject: New York State Innovation Venture Capital Fund.

Purpose: Provide the basis for administration of the New York State Innovation Venture Capital Fund.

Text or summary was published in the April 2, 2014 issue of the Register, I.D. No. UDC-13-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, Sr. Counsel, ESD - Lending Programs, Urban Development Corporation, 633 Third Avenue, New York, NY 10017, (212) 803-3792, email: apidedjian@esd.ny.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.

Workers' Compensation Board

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Medical Treatment Guidelines

I.D. No. WCB-22-14-00009-P

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

Proposed Action: Amendment of section 324.2 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13, 117 and 141

Subject: Medical Treatment Guidelines.

Purpose: Add Non-Acute Pain Medical Treatment Guideline.

Text of proposed rule: Subdivisions (a) and (b) of section 324.2 of Part 324 of 12 NYCRR are amended to read as follows:

§ 324.2 Medical treatment guidelines

(a) Medical Treatment Guidelines. Regardless of the date of accident or date of disablement, treatment of on the job injuries, illnesses, or occupational diseases to a worker's lumbar, thoracic, or cervical spine, shoulder or knee, or for carpal tunnel syndrome*, or non-acute pain* shall be consistent with the Medical Treatment Guidelines set forth in paragraphs (1) through ([5]*6*) of this subdivision. The operative Medical Treatment Guidelines shall be the Medical Treatment Guidelines in place on the date on which medical services are rendered. All Treating Medical Providers shall treat all existing and new workers' compensation injuries, illnesses, or occupational diseases, except as provided in section 324.3 of this Part, in accordance with the following:

(1) for the lumbar and thoracic spine, the New York Mid and Low Back Injury Medical Treatment Guidelines, [Second] *Third* Edition, [January 14, 2013, effective March 1, 2013] *May 27, 2014, effective August 13, 2014*, which is herein incorporated by reference;

(2) for the cervical spine, the New York Neck Injury Medical Treatment Guidelines, [Second] *Third* Edition, [January 14, 2013, effective March 1, 2013] *May 27, 2014, effective August 13, 2014*, which is herein incorporated by reference;

(3) for the knee, with the New York Knee Injury Medical Treatment Guidelines, [Second] *Third* Edition, [January 14, 2013, effective March 1, 2013] *May 27, 2014, effective August 13, 2014*, which is herein incorporated by reference;

(4) for the shoulder, the New York Shoulder Injury Medical Treatment Guidelines, [Second] *Third* Edition, [January 14, 2013, effective March 1, 2013] *May 27, 2014, effective August 13, 2014*, which is herein incorporated by reference; [and,]

(5) for carpal tunnel syndrome, the New York Carpal Tunnel Syndrome Medical Treatment Guidelines, [First Edition, January 14, 2013, effective March 1, 2013] *Second Edition, May 27, 2014, effective August 13, 2014*, which is incorporated herein by reference[.] *; and,*

(6) for non-acute pain, the New York Non-Acute Pain Medical Treatment Guidelines, First Edition, May 27, 2014, effective August 13, 2014, which is incorporated herein by reference.

(b) Obtaining the medical treatment guidelines. The New York Mid and Low Back Injury Medical Treatment Guidelines, New York Neck Injury Medical Treatment Guidelines, New York Knee Injury Medical Treatment Guidelines, New York Shoulder Injury Medical Treatment Guidelines, [and] New York Carpal Tunnel Syndrome Medical Treatment Guidelines*, and New York Non-Acute Pain Medical Treatment Guidelines* incorporated by reference herein may be examined at the office of the Department of State, 99 Washington Avenue, Albany, New York, 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the Board. Copies may be downloaded from the Board's website or obtained from the Board by submitting a request in writing, with the appropriate fee, identifying the specific guideline requested and the choice of format to Publications, New York State Workers' Compensation Board, 328 State Street, Schenectady, New York 12305-2318. Information about the Medical Treatment Guidelines can be requested by email at *GENERAL__INFORMATION@wcb.ny.gov*, or by telephone at 1-800-781-2362. The Medical Treatment Guidelines are available on paper or compact disc. A fee of ten dollars will be charged for each guideline requested in paper format, and a fee of five dollars will be charged for a compact disc containing all guidelines requested. Payment of the fee shall be made by check or money order payable to ''Chair WCB.''

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Schenectady, NY 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.

Regulatory Impact Statement

1. Statutory Authority:

The Chair of the Workers' Compensation Board (Chair) is authorized to amend Part 324 of Title 12 NYCRR. Workers' Compensation Law (WCL) § 117 (1) authorizes the Chair to make reasonable regulations consistent with the provisions of the WCL. WCL § 141 authorizes the Chair to enforce all provisions of the chapter and make administrative regulations and orders providing in part for the receipt, indexing, and examining of all notices, claims and reports.

WCL § 13 establishes employer liability for the provision of medical treatment and care for an injured employee and authorizes the Chair to prepare and establish a schedule for the state of charges and fees for medical treatment and care. Concomitant with an employer's liability to provide medical treatment and care for an injured employee and the Chair's authority to establish a medical fee schedule is the need for guidelines setting forth standards of appropriate treatment and care for injured or ill employees.

2. Legislative Objectives:

The purpose of the 12 NYCRR Part 324 (the Medical Treatment Guidelines, Guidelines or MTG) was to create medical guidelines for the treatment of injured workers using the most effective evidence-based modern diagnostic and treatment techniques. The MTG are standards of medical treatment that serve several important functions within the workers' compensation system. The Guidelines seek to: 1) set a single standard of medical care for injured workers; 2) expedite quality care for injured workers; 3) improve the medical outcomes for injured workers; 4) speed return to work by injured workers; 5) reduce disputes between payers and medical providers over treatment issues; 6) increase timely payments to medical providers; and 7) reduce overall system costs.

3. Needs and Benefits:

The New York Non-Acute Pain MTG supplement and update current recommendations on chronic pain contained in previously adopted MTG. The Non-Acute Pain MTG includes state-of-the-art recommendations regarding the initiation of and long-term use of narcotics for the treatment of pain. This is a particularly important topic in light of the opioid epidemic facing the nation, including New York's injured workers.

The Non-Acute Pain MTG provides for a comprehensive approach to the management of patients with non-acute pain, including best practice recommendations for prescribing narcotics. The Non-Acute Pain MTG encompasses a continuum of treatment approaches including early identification, the use of the biopsychosocial model, assessment and treatment of delayed recovery, identification of measurable outcomes, nonpharmacological treatments and pharmacological approaches, including both non-opioid and opioid medications.

The Non-Acute Pain MTG reflects a consensus of the medical professionals on the Medical Advisory Committee (MAC) regarding the diagnosis and management of chronic pain. The thirteen member MAC consists of eleven physicians, one business representative, and one labor representative. The MAC is co-chaired by the Medical Directors of the Worker Compensation Board (Board), Jaime Szeinuk, M.D. and Elain Sobol Berger, M.D., J.D. The MAC chose the term "non-acute pain" as the name for the MTG rather than chronic pain in order to provide a definition that encompasses any pain that exists beyond the anticipated recovery time and to avoid the negative implications associated with chronic pain.

The NAP MTG incorporates New York's recent I-Stop opioid tracking requirements in order to address safety and health issues posed by the misuse and abuse of opioids.

The Guidelines set forth the standard of treatment and care of non-acute pain for workers' compensation claimants. Carriers are only required to pay for medical care that is consistent with the Guidelines or that has been approved through a variance process.

4. Costs:

The Non-Acute Pain MTG is intended to improve medical care, speed delivery of care, speed return to work, reduce administrative costs to all parties and the Board, and reduce delays in resolution of disputes. As with the original Guidelines adopted in 2010, and amendments adopted in January 2013, the Board will offer support for this implementation through training.

The Guidelines will be available on the Board's website and anyone will be able to download and print them free of charge. If an individual or entity requests a hardcopy of one or more of the guidelines, the cost will

be $10.00 per guideline or $60.00 for all six. This charge is to cover the Board's cost in making the copies. The charge for one or more of the Guidelines on a compact disc is $5.00.

It should be noted that all parties will be able to use the Non-Acute Pain MTG without having to pay a licensing fee.

5. Local Government Mandates:

The rule only imposes a mandate on local governments that are self-insured or that own and/or operate a hospital. The mandates on local governments are the same as those imposed on private self-insured employers, insurance carriers, the State Insurance Fund, third party administrators, medical professionals, private hospitals. Self-insured local governments and those that own and/or operate a hospital will need to comply with the requirements in the rule the same as a private self-insured employer or insurance carrier or private hospital. It is expected that the rule will generate reduced medical costs and therefore lower workers' compensation costs for all employers, including local governments.

6. Paperwork Requirements:

The proposed amendments to the regulations should not affect paperwork associated with medical treatment. Several medical reporting forms will be changed to include the Non-Acute Pain MTG. But there will be no change to the method and manner of the forms use.

7. Duplication:

The proposed regulation does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative was to not add treatment guidelines for non-acute pain. However, the Board and MAC recognized the importance of developing Non-Acute Pain MTG for a number of reasons.

Primarily, it was recognized that there is a need for a comprehensive approach to the management of patients with non-acute pain, including best practice recommendations for prescribing narcotics. The Non-Acute Pain MTG encompasses a continuum of treatment approaches including early identification, the use of the biopsychosocial model, assessment and treatment of delayed recovery, identification of measurable outcomes, non-pharmacological treatments and pharmacological approaches, including both non-opioid and opioid medications.

Over the past decade, there has been a dramatic increase in the use of opioids to treat chronic non-cancer pain. It has been reported that among the workers' compensation population nationally, the prevalence of opioid use is approximately 32%. And it has been medically recognized that the use of opioids for work-related injuries may actually increase the likelihood of disability. For example studies have shown that receiving more than a one week supply of opioids or two or more opioid prescriptions soon after an injury doubles a worker's risk of disability at one year post-injury, compared with workers who do not receive opioids.

In addition, chronic use of opioids is strongly associated with the occurrence of dependence, particularly in the presence of co-morbid mental health conditions. In addition to the risk of mortality, chronic opioid therapy is associated with significant risk of non-fatal and fatal adverse outcomes. Accordingly, the Board and MAC found that there was no alternative but to develop Non-Acute Pain MTG that focus on carefully assessing the risk/benefit of prescribing opioids for injured workers, to provide guidance on use of opioids, tapering chronic opioid therapy, and a clear definition of meaningful improvement in function.

9. Federal Standards:

There are no federal standards applicable to this proposed regulation.

10. Compliance Schedule:

Participants will be able to comply with the proposed regulation when they take effect. The Board will conduct outreach and education to providers, insurance companies, attorneys, Board staff, and others, between now and the effective date to facilitate incorporation of changes and to familiarize all stakeholders with the substantive content of the new and revised Guidelines. The participants will also have time to incorporate the Non-Acute Pain Guideline into their policies, procedures and practices.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses and local governments whose only involvement with the workers' compensation system is that they are employers and are required to have coverage will not be affected by this rule. Small businesses cannot be individually self-insured but must purchase workers' compensation coverage from the State Insurance Fund or a private insurance carrier authorized to write workers' compensation insurance in New York or join a group self-insured trust. It is the entity providing coverage for the small employer that must comply with all of the provisions of this rulemaking, not the covered employer. The impact on the State Insurance Fund and all private insurance carriers is not covered in this document as they are not small businesses. Group self-insured trusts, third party administrators hired by private insurance carriers and group self-insured trusts may be small businesses, and these businesses may be slightly impacted by this regulation. All health practitioners authorized by the Chair to treat will have to comply with this rule when treating injured workers for non-acute pain. Finally, local governments that own and/or operate a hospital may be affected by this rule.

The approximately 2,500 political subdivisions that are self-insured for workers' compensation coverage in New York State will have to comply with the provisions of this proposal. Those local governments who are not self-insured and do not own and/or operate a hospital will not be affected by this rule.

2. Compliance requirements: The proposed rule does not impose new compliance requirements on the small businesses and local governments described above.

Adoption of the Non-Acute Pain Medical Treatment Guidelines (Guidelines) will require all medical providers to adhere to those Guidelines and request a variance, should the requested treatment deviate from the treatment recommended in the Guidelines. The process for requesting a variance and the forms used to request a variance are already in use. It is not anticipated that the proposed amendments will require any additional staffing or resources by rural employers.

3. Professional services: Small businesses and local governments affected by the rule will not need any new professional services to comply with this rule.

4. Compliance costs: The proposed amendments are intended to reduce administrative costs to all parties including rural participants by adding clarity and guidance in the treatment of injured workers. As with the earlier adopted Guidelines, the Board will offer support for this implementation through training. The Guidelines will be available on the Board's website and anyone will be able to download and print them free of charge. If an individual or entity requests a hardcopy of one or more of the guidelines, the cost will be $10.00 per guideline or $60.00 for all six. This charge is to cover the Board's cost in making the copies. The charge for one or more of the Guidelines on a compact disc is $5.00.

5. Economic and technological feasibility: It is economically and technologically feasible for small businesses and local governments to comply with the proposed amendments. The proposed amendments do not add any technological requirements or economic challenges from the current Guidelines.

6. Minimizing adverse impact: As stated above, the implementation of the proposed amendments is expected to save money for all participants in the workers' compensation system by prescribing Guidelines for the treatment of non-acute pain.

7. Small business and local government participation: The Board has solicited comments for the proposed Non-Acute Pain MTG on its website for this final version and earlier drafts from all participants in the workers' compensation system, including small businesses and local governments. The proposed amendment is expected to reduce costs and consume fewer resources for all participants in the workers' compensation system including small businesses and local governments.

While medical professionals and affected payers who are small businesses will be required to incorporate the Guidelines into their policies, practices, and procedures, the Board will assist in this process by providing training and support to stakeholders. There will be no charge for the training.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The amendment of section 324.2 of Part 324 of 12 NYCRR will apply to all insurance carriers, the State Insurance Fund self-insured employers, self-insured local governments, local governments that own and/or operate hospitals, attorneys, medical providers, group self-insured trusts, third party administrators and claimants across the state. These individuals and entities exist in all rural areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Adoption of the Non-Acute Pain Medical Treatment Guidelines (Guidelines) will require all medical providers to adhere to those Guidelines and request a variance, should the requested treatment deviate from the treatment recommended in the Guidelines. The process for requesting a variance and the forms used to request a variance are already in use. It is not anticipated that the proposed amendments will require any additional staffing or resources by rural employers.

3. Costs:

The proposed amendment is intended to reduce administrative costs to all parties including rural participants, reduce delays in resolution of disputes, and add clarity and guidance in the treatment of injured workers. As with the original Guidelines adopted in 2010 and the 2013 amendment, the Board will offer support for this implementation through training. The Guidelines will be available on the Board's website and anyone will be able to download and print them free of charge. If an individual or entity requests a hardcopy of one or more of the guidelines, the cost will be $10.00 per guideline or $60.00 for all six. This charge is to cover the Board's cost in making the copies. The charge for one or more of the Guidelines on a compact disc is $5.00.

4. Minimizing adverse impact:

As stated above, the implementation of Non-Acute Pain MTG is expected to reduce costs and consume fewer resources for all participants in the workers' compensation system including rural participants.

While medical professionals and affected payers will be required to incorporate the Guidelines into their policies, practices, and procedures, the Board will assist in this process by providing training to stakeholders and Board employees. There will be no charge for the training.

5. Rural area participation:

The Board has posted the Guidelines on its website for six months and has requested all system participants to comment on the Guidelines. During this time the Board has received and reviewed comments.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs. The proposed rule amends Section 324.2 of Part 324 of 12 NYCRR, known as the Medical Treatment Guidelines (Guidelines), to add a Non-Acute Pain Guideline and update earlier Guidelines for the back, neck, shoulder, knee and Carpal Tunnel Syndrome for consistency among the Guidelines and with the Non-Acute Pain Guideline.

The rule does not eliminate any existing process, procedure, or program, and will not result in an adverse impact on jobs.