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 Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-14-15-00005-A
Filing No. 935
Filing Date: 2015-10-30
Effective Date: 2015-11-18

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the April 8, 2015 issue of the Register, I.D. No. CVS-14-15-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-15-00003-A
Filing No. 938
Filing Date: 2015-10-30
Effective Date: 2015-11-18

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the May 13, 2015 issue of the Register, I.D. No. CVS-19-15-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-15-00004-A
Filing No. 936
Filing Date: 2015-10-30
Effective Date: 2015-11-18

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the May 13, 2015 issue of the Register, I.D. No. CVS-19-15-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-15-00006-A
Filing No. 937
Filing Date: 2015-10-30
Effective Date: 2015-11-18

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the May 13, 2015 issue of the Register, I.D. No. CVS-19-15-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

New York State Gaming Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Require Claimant to Indicate on Claim Form Whether Commission at Claimant's Expense Shall Test a Claimed Horse for Drug Use

I.D. No. SGC-46-15-00004-P

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

Proposed Action: Amendment of sections 4038.5, 4038.17, 4109.3 and 4109.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

Subject: To require claimant to indicate on claim form whether commission at claimant's expense shall test a claimed horse for drug use.

Purpose: To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text of proposed rule: Section 4038.5 of 9 NYCRR would be amended as follows:

§ 4038.5. Requirements for claim; determination by stewards.

(a) All claims shall be in writing, sealed in an envelope and deposited in a locked box provided for this purpose by the racing secretary or the racing secretary's designee, at least 10 minutes before post time. Claim slip forms must be completely filled out and must, in the judgment of the stewards, be sufficiently accurate to identify the claim, otherwise the claim will be void. No money shall accompany the claim. Each person desiring to make a claim, unless the person has such amount to the person's credit with the association, must first deposit with the association the whole amount of the claim, in a manner approved by the racing secretary or designee for which a receipt will be given. *Unless funds of the claimant available in the claimant's account with the association are sufficient, in the judgment of the stewards, to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing. If such funds are sufficient, an amount sufficient to pay for the post-race testing requested on the claim form shall be frozen in such claimant's account to secure anticipated costs of testing.* All claims shall be passed upon by the stewards. The person determined at the closing time for claiming to have the right of claim shall become the owner of the horse when the start is effected, whether the horse is sound or unsound or injured before or during the race or after the race, except that:

(1) the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section 4038.19 of this Part unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and

(2) a claim shall be void for any horse that dies during a race or is euthanized on the track following a race; and

(3) a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

In the event more than one person should enter a claim for the same horse, the disposition of the horse shall be decided by lot by the stewards. Any horse so claimed shall then be taken to the test barn for delivery to the claimant after [the] *any* test sample is taken.

Section 4038.17 of 9 NYCRR would be amended as follows:

§ 4038.17. Horses claimed—testing.

If the claimant of a horse has requested post-race testing, at the expense of the claimant, on the claim form, then the stewards shall designate such horse [Each horse claimed in a race shall be designated by the stewards for post-race blood and urine testing] *for post-race testing pursuant to subdivision (b) of section 4012.3 of this Article*. The original trainer shall remain responsible for the claimed horse until [the] *any* on-track post-race sample collection has been completed.

Section 4109.3 of 9 NYCRR would be amended as follows:

§ 4109.3. Claiming procedure.

(a) Claimant's credit. The claimant must have to [his] *the claimant's* credit with the track an amount equivalent to the specified claiming price, the applicable sales tax, the cost of transferring the registration[,] and the fee for the test for equine infectious anemia. No claims shall be accepted unless such credit is certified in writing by an authorized track official and such written certification is included with the claim. *Unless the claimant also has to the claimant's credit an amount sufficient to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing.* No track official of [said] *the racing* association shall give any information as to the filing of any claim or claim information to the public and horsemen until after the race has been run.

* * *

Section 4109.5 of 9 NYCRR would be amended as follows:

§ 4109.5. Horses claimed—testing.

If the claimant of a horse has requested post-race testing, at the expense of the claimant, on the claim form, then the judges shall designate such horse [Each horse claimed in a race shall be designated by the judges for post-race blood and urine testing] *for post-race testing pursuant to subdivision (b) of section 4120.8 of this Article*. The original trainer shall remain responsible for the claimed horse until [the] *any* on-track post-race sample collection has been completed.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.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 New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1), (19), 301(1), (2), and 902(1). Under Section 103(2), the Commission is responsible to supervise, regulate and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions, and directed to adopt rules to prevent horses from racing under the influence of substances affecting their speed. Section 902(1) authorizes the Commission to promulgate rules and regulations for an equine drug testing program that assures the public's confidence and continues the high degree of integrity in pari-mutuel racing and to impose administrative penalties for racing a drugged horse.

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

3. Needs and benefits. This rule making is necessary to allow the Commission the flexibility to determine which claiming horses should be tested

at the expense of the Commission consistent with current enforcement needs and realities, while allowing a prospective owner of a claimed horse ("claimant") to arrange for the Commission to test the horse at the claimant's expense at the conclusion of the race. Both the harness and thoroughbred rules for testing all claimed horses were adopted in 1983 and require revision to reflect equine testing priorities.

Sections 4038.17 and 4109.5 will be amended to no longer require the stewards and judges to designate every claimed horse for post-race equine drug testing. The proposed amendments will require such testing by the Commission, however, if the claimant had requested such testing at the claimant's expense on the claim form. Sections 4038.5 and 4109.3 will be amended to provide a method for a claimant to post sufficient funds to pay for the cost of such requested testing, in the same manner as sufficient funds are posted to pay for a claimed horse, in advance of the race.

Under the current rules, the Commission must test all horses that are claimed, which is problematic given the cost of testing when weighed against realistic fiscal implications and the priorities of the Commission's equine drug testing program. All claimed horses have to be tested whether there is a basis for testing or not, the Commission has no flexibility in determining which claiming horses should be tested, and there is no discretion granted to withhold testing in the absence of any basis for testing a claiming horse. No other major racing jurisdiction has such a requirement.

In claiming, equine testing is not directly related to the integrity of the racing contest. A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race in which the horse is entered by its owner. The potential claimant of a horse in a claiming race must enter a claim before the race. When more than one claim is entered for a horse in a claiming race, the successful claimant is chosen by lot. By entering a horse in a claiming race, the current owner offers the horse for sale to any qualified person who enters a claim. There is no rationale for testing a claiming horse simply because it is sold.

The claimant can nullify a claim in the event of a positive drug test, and so the testing program serves as a distinct benefit to such new owner, who is a private party to what amounts to a sale. It is not uncommon, however, for a claimant to decide not to nullify a claim despite a positive drug test. In such cases, the equine drug testing program serves only to permit a claimant to nullify the claim for unrelated reasons, e.g., because the horse raced poorly.

The Commission's other equine testing rules are more directly related to the results, and therefore the integrity, of a race. Under thoroughbred rule 4012.3 and harness rule 4120.8, for example, equine drug testing is conducted on every winner and at least one other horse designated by the respective stewards or judges. Such equine testing rules will still apply to winners and another designated horse in claiming races if the proposed amendments are adopted.

The amendments to harness rule 4109.5 are also necessary to bring the harness rule into uniformity with the thoroughbred rule by including the clause, "The original trainer shall remain responsible for the claimed horse until the on-track post-race sample collection has been completed." This amendment is necessary to expressly assign a responsibility that, although it has been done in practice, has not been included in the harness rule.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will have no effect on the cost of testing by the Commission and will merely permit the reallocation of limited equine testing funds to other types of equine drug testing conducted by the Commission. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission relied on the studies and advice provided by Dr. George A. Maylin, the Director of the New York State Drug Testing and Research Program.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None. No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered an alternative suggestion by some regulated parties to preserve the current requirement for equine testing of claimed horses, and to create general fiscal savings by instead testing only one horse, randomly, in each race. This alternative was not considered feasible because random testing is not based on the performance of the horse in a race, such as a winning horse or a beaten favorite, nor was the alternative considered adequate to justify testing a horse merely because it was claimed, rather than for objective reasons. In addition, while other racing states commonly choose to test the winner and another horse in each race, none routinely test claimed horses at the expense of the racing commission.

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

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

These proposals would discontinue the Commission's practice of collecting a post-race sample from all claimed horses but permit every claimant to have a claimed horse tested at the request and expense of the claimant. The purpose of this proposal is to mitigate the burdensome administrative expense of testing every claimed horse when many claimants do not void a claim, which is their right, in the rare instance when such a sample tests positive. Free testing of every claimed horse is also not a service that is not offered by any other racing jurisdiction.

The racing stewards and judges will continue to select the winner and one other horse, using their judgment and based on the performance of the horse, to be sampled and tested for illicit drug use at the conclusion of each race. Claimants will continue to be able to void a claim if any such post-race sample tests positive for the presence of a prohibited substance.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Requirement of Specific Minimum Penalties for Certain Multiple Medication Violations

I.D. No. SGC-46-15-00007-P

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

Proposed Action: Addition of Part 4045 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutual Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Requirement of specific minimum penalties for certain multiple medication violations.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Text of proposed rule: A new Part 4045, §§ 4045.1 to 4045.6, would be added to 9 NYCRR, to read as follows:

Part 4045. Minimum Penalty Enhancement.

§ 4045.1. Definitions.

The following terms, when used in this Part, have the following meanings:

(a) ARCI Penalty Guidelines means the penalty guidelines published in "Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule," Version 8.0 (revised December 2014) of the Association of Racing Commissioners International, Inc., which are hereby incorporated by reference.

(b) Equine drug rule means any law, rule, regulation or order that restricts the administration to, or presence in, a racehorse of a drug or other substance in New York or another racing jurisdiction.

(c) Final adjudication means a ruling or order of a racing commission that is not currently subject to an administrative or judicial stay, and if such ruling or order is subjected subsequently to a stay, then the ruling or order existing after any such stay ends.

(d) Precipitating equine drug rule violation means an equine drug rule violation committed in New York that causes or may cause, depending on the final adjudication of a ruling or order of a racing commission, the penalties of this section to apply.

(e) Racing commission means the agency regulating horse racing in a jurisdiction that has horse racing and pari-mutuel wagering.

§ 4045.2. General.

The commission shall suspend the occupational licenses of a habitual or persistent violator of equine drug rules as an additional penalty when there is a precipitating equine drug rule violation. This suspension shall constitute the bare minimum overall penalty enhancement that arises from

a previous violation or violations of equine drug rules, wherever committed, and the commission shall continue to apply its own much broader and stricter standards when determining the appropriate penalty for the precipitating and other equine drug rule violations.

§ 4045.3. Points.

(a) When a precipitating equine drug rule violation occurs, the commission shall examine the equine drug rule violation history of the violator and assign a point value to other equine drug rule violations as set forth in this section.

(b) The commission shall assign six points, which shall accumulate permanently, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class A in the ARCI Penalty Guidelines; or

(2) is not classified in the ARCI Penalty Guidelines, but has a very high potential to affect race performance and no generally accepted veterinary use in racing horses, subject to any adjustments that apply as set forth in this section.

(c) The commission shall assign four points, which shall accumulate with points resulting from other violations committed within a three-year period, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class B in the ARCI Penalty Guidelines; or

(2) is not classified in the ARCI Penalty Guidelines, but has a high potential to affect race performance and

(i) has a high potential for abuse; or

(ii) has no generally accepted veterinary use in racing horses, subject to any adjustments that apply as set forth in this section.

(d) The commission shall assign two points, which shall accumulate with points resulting from other violations committed within a two-year period, for a violation involving a drug or other substance that is classified as Penalty Class C in the ARCI Penalty Guidelines, subject to any adjustments that apply as set forth in this section.

(e) The commission shall assign one point, which shall accumulate with points resulting from other violations committed within a one-year period, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class D in the ARCI Penalty Guidelines; or

(2) does not fall within any other subdivision of this section, subject to any adjustments that apply as set forth in this section.

(f) No points shall be assigned for a violation involving a drug or other substance that has no effect on the physiology of a racing horse except to improve nutrition or to treat or prevent infections or parasite infestations.

(g) No points shall be assigned for any violations that occurred before January 1, 2014.

(h) The point values set forth in subdivisions (c), (d) and (e) of this section are reduced by one-half for any drug or other substance that is listed in section 4043.3 of this Subchapter.

(i) If a violation involves more than one drug or substance, then the commission shall assign to such violation not less than the highest point value of any one of the drugs or substances and shall assign additional points for each drug or substance that could have the effect of substantially altering the nature or effect of such drugs or other substances on the horse.

(j) If multiple violations involving one drug or substance are committed before a licensee is notified of a positive laboratory test, then the commission may assign lesser points for the violations, although not less than the points for a single violation, when the responsible parties are able to show that the multiple violations occurred as the result of an honest and unavoidable mistake.

(k) The commission shall assign point values as of the date of a violation.

(l) Points assigned for an equine drug rule violation are not removed from a licensee's record when they serve as a basis to suspend a license. Points continue to accumulate for the time periods that are set forth in subdivisions (c), (d) and (e) of this section.

§ 4045.4. Administrative action.

The commission shall take the following administrative action after a final adjudication of the commission establishes that a licensee has committed a precipitating equine drug rule violation in New York:

(a) The commission shall calculate the points applicable to such licensee to determine whether to take any further administrative action pursuant to this Part.

(1) A licensee may be mailed a letter advising such licensee of the status of the equine drug violation record of such licensee and any possible future action that may be taken in the event of such licensee's accumulation of additional points.

(2) Although point values shall be assigned as of the date of each violation, the commission shall not initiate a suspension pursuant to this Part until after the final adjudication of each equine drug rule violation for which points are assigned pursuant to this Part.

(3) When a precipitating equine drug rule violation results in the licensee having accumulated three or more points based on final adjudications of equine drug rule violations, the commission shall find that a licensee is a habitual or persistent equine drug rule violator.

(b) The Director of the Division of Horse Racing and Pari-Mutuel Wagering shall suspend the occupational licenses of a habitual or persistent equine drug rule violator, at a minimum, as follows:

(1) if the licensee has accumulated 3 to 5.5 points as a result of equine drug rule violations, a suspension of 30 days;

(2) if the licensee has accumulated 6 to 8.5 points as a result of equine drug rule violations, a suspension of 60 days;

(3) if the licensee has accumulated 9 to 10.5 points as a result of equine drug rule violations, a suspension of 180 days; and

(4) if the licensee has accumulated 11 or more points as a result of equine drug rule violations, a suspension of one year.

(c) Such license suspensions shall in no way affect any administration action taken under any other provision of this Subchapter, including the imposition of a penalty for the precipitating or other equine drug rule violation in New York.

(d) The Director of the Division of Horse Racing and Pari-Mutuel Wagering, on behalf of the commission, may proportionately reduce such suspension, however, when convinced by clear and convincing evidence that the commission had already enhanced, based on one or more of the predicate equine drug rule violations, the penalty imposed on the licensee for the precipitating equine drug rule violation.

(e) The State Steward may, when authorized by the Director of the Division of Horse Racing and Pari-Mutuel Wagering, add the habitual or persistent equine drug rule violator suspension when issuing a ruling upon a precipitating equine drug rule violation.

§ 4045.5. Start of suspension.

A habitual or persistent equine drug rule violator suspension shall not take effect until the commission has notified the licensee in writing of the suspension and

(a) the licensee waives in writing the right to an adjudicatory hearing;

(b) the licensee does not, within 10 days, make a written application for an adjudicatory hearing before the commission; or

(c) an administrative stay for the adjudicatory hearing has expired and no further stay has been granted to the licensee.

§ 4045.6. Adjudicatory hearing.

(a) A habitual or persistent equine drug rule violator may, within 10 days of service upon such violator of a notice of a suspension imposed by this Part, file a written application for an adjudicatory hearing before the commission. A request that is not filed within 10 days shall be null and void and the licensee shall have waived any right to an adjudicatory hearing.

(b) If a licensee requests an adjudicatory hearing for a suspension imposed pursuant to this Part, the commission shall issue an administrative stay of the habitual or persistent equine drug rule violator suspension. Such stay shall be for 45 days from the date of service on the licensee of the notice of the suspension. The licensee may request, on motion with reasonable notice to the secretary of the commission, filed in writing, an extension of such stay for good cause shown that the licensee has not been able to participate in an evidentiary hearing within such period of time. The director of the Division of Horse Racing and Pari-Mutuel Wagering shall decide such motion on behalf of the commission, and the decision of such director shall be final. Upon the completion of the evidentiary hearing, another administrative stay of the suspension shall be issued until such time as the commissioners have taken final agency action.

(c) The adjudicatory hearing shall be conducted pursuant to Part 4550 of this Chapter.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, New York 12305-7500, (518) 388-3407, email: gamingrules@gaming.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 New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1), 104(19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to enhance the integrity and safety of thoroughbred pari-mutuel racing.

3. Needs and benefits: This rulemaking will add a new Part 4045 to 9 NYCRR and require specific minimum penalties for certain multiple violations of equine drug rules.

Under this proposal, the Commission would impose a bare minimum license suspension, after the occurrence of an equine drug rule violation in New York, when the Commission determines that the offender meets the criteria to be considered a habitual or persistent violator.

The proposal assigns, in section 4045.3, a specific number of points for each type of equine drug violation, whether committed in New York or elsewhere. A drug that has a very high potential to affect race performance and no therapeutic reason to given to a horse, for example, would be assigned the most points. Points would remain on a person's license history for a period of time determined by the seriousness of the drug.

A minimum mandatory license suspension is assigned, in section 4045.4, based on the accumulation of such points within specified time periods. The minimum mandatory penalty enhancement would be 30, 60, 180 or 365 days, depending on how many points have accumulated against the licensee. A penalty enhancement would apply for only the most serious or persistent equine drug violators.

The Commission, when also determining the penalty for an equine drug rule violation that precipitates this action, may still consider previous rule violations, but shall proportionately reduce the minimum penalty enhancement when appropriate to avoid multiple penalty enhancements for the same previous rule violations.

The minimum penalty enhancement suspension would not begin until after any pending challenges to the underlying rule violations were resolved, as set forth in section 4045.5, and after a hearing, if timely requested, as provided in section 4045.6.

This rulemaking is a model rule of the Association of Racing Commissioners International, Inc. ("ARCI") and is anticipated to be adopted by racing commissions throughout the United States. The adoption of this proposed rule will help to discourage horsepersons from having recurring violations of equine drug rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation.

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

6. Paperwork: The Commission will assess a bare minimum penalty enhancement, when applicable, when an equine drug rule is violated in New York. The affected party may request a hearing. The Commission already examines the basis of this assessment, i.e., the licensee's history of equine drug (and other) rule violations. A permanent record of such violations is maintained by the ARCI.

7. Duplication: None.

8. Alternatives: The Commission considered and rejected not proposing this rule. The Commission already examines a violator's history of past violations when determining the appropriate penalty for a current rule violation. It is possible, however, that the Commission might not impose a penalty that meets the floor established by the proposed bare minimum enhancement. Adopting this proposal is the most effective means to ensure that an appropriate bare minimum penalty will be imposed, and also supports a national effort to establish a uniform penalty floor in various racing jurisdictions.

9. Federal standards: None.

10. Compliance schedule: The proposed rule does not create any additional requirements with which regulated persons must comply.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal only authorizes the Commission to assess a minimum penalty enhancement when an equine drug violation occurs in New York and the offender has a specified significant history of such violations in New York or elsewhere. No regulated party will need a period to cure a pending matter because the penalty enhancement will apply only if an additional rule violation occurs in the future.

Such regulation will serve to enhance the integrity of racing and the health and safety of racehorses by serving as a deterrent to habitual and persistent equine drug rule violations. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Department of Health

NOTICE OF ADOPTION

Chronic Renal Dialysis Services (CRDS)

I.D. No. HLT-22-15-00016-A
Filing No. 964
Filing Date: 2015-11-03
Effective Date: 2015-11-18

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

Action taken: Amendment of Part 757 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Chronic Renal Dialysis Services (CRDS).

Purpose: To update the CRDS provisions concerning Medicare and Medicaid Programs for coverage for End Stage Renal Disease Facilities.

Text or summary was published in the June 3, 2015 issue of the Register, I.D. No. HLT-22-15-00016-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Early Intervention Program

I.D. No. HLT-46-15-00006-P

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

Proposed Action: Amendment of Subpart 69-4 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2559-B

Subject: Early Intervention Program.

Purpose: To conform existing program regulations to Federal regulations and State statute.

Public hearing(s) will be held at: 1:00 p.m. to 3:00 p.m., Dec. 21, 2015 at School of Public Health Auditorium, University at Albany, One University Place, Rensselaer, 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.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): This notice of proposed rulemaking amends 10 NYCRR Subpart 69-4 governing the Early Intervention Program, to conform to federal regulations, 34 CFR Parts 300 and 303, issued by the U.S. Department of Education and amendments to Title II-A of Article 25 of the Public Health Law (PHL).

Section 69-4.1(b) is revised to include initial, as well as ongoing procedures in the definition of assessment. Dominant or native language as defined in § 69-4.1(j) is amended to clarify that when used with respect to an individual who is limited English proficient, dominant or native language means the language or mode of communication normally used by the individual; or in the case of a child, the language normally used by

the child's parent, except for evaluations and assessments of the child. New paragraphs (1) and (2) are added to § 69-4.1(j), to clarify that for evaluations and assessments of the child, dominant or native language means the language normally used by the child, if determined developmentally appropriate by qualified personnel conducting the evaluation or assessment; and, to clarify that when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, native language means the mode of communication normally used by the individual.

Subdivision (l)(1)(i) of § 69-4.1 amends the definition of early intervention services by adding new clauses (a) through (e) on the five developmental domains to be addressed in individualized family service plans (IFSPs).

The definitions of assistive technology in § 69-4.1(l)(2)(i) and health services in § 69-4.1(l)(2)(xviii)(c)(5) are amended to exclude devices that are surgically implanted. Sections 69-4.1(l)(2)(xviii)(c)(5)(i) and (ii) are added to clarify the exclusion of surgically implanted devices from the definition of assistive technology devices does not limit the child's right to receive services related to implementation, optimization, maintenance, or replacement of such a device or early intervention services that are identified in the child's IFSP; and, does not prohibit a provider from routinely checking that a hearing aid or external components of a surgically implanted device of a child with a disability are functioning properly.

A definition for sign language and cued language services is added as § 69-4.1(l)(2)(xiii). The definition of IFSP in § 69-4.1(w) (1), (2) and (3) is amended and a new paragraph (4) is added to include the early intervention official in the team developing the IFSP; to indicate that the IFSP must include matters specified in § 69-4.11 related to IFSP procedures and requirements; and, to incorporate the timeliness requirement from federal regulations for implementation of the IFSP.

Subdivision (ao) of § 69-4.1 is amended to clarify personally identifiable information as the definition used in the federal Family Educational Rights and Privacy Act (FERPA), except that the term "student" and "school" as used in FERPA means "child" and "early intervention service providers", respectively.

Section 69-4.2, on the Early Intervention/Public Health Official's role in the Child Find System, is modified to add new (b), to clarify the Early Intervention Official (EIO) is not required to provide a multidisciplinary evaluation and assessment or convene an IFSP meeting for a child referred to the Early Intervention Program fewer than 45 days before his or her third birthday. Under these circumstances, the EIO must refer the child directly to the Committee on Preschool Special Education (CPSE) of the local school district in which the child resides. Section 69-4.3(a) is amended to add new primary referral sources included in federal regulation (public agencies and staff in the child welfare system, domestic violence shelters and agencies, and homeless family shelters).

Service coordination responsibilities are amended in § 69-4.6(b) and (c) to conform federal regulations as follows. Section 69-4.6(b)(1) is amended to clarify that responsibilities for assisting families in accessing services include referring families to providers for needed services identified in the IFSP, including making appointments for early intervention and other services; section 69-4.6(c)(3) is amended to clarify service coordinators are responsible for coordinating services provided to the family, and to add educational and social services as examples of the types of services requiring coordination; section 69-4.6(b)(4) is amended to establish parental consent for written services as initiating the timeline within which services must be delivered; section 69-4.6(b)(3) and (c)(4) are amended to clarify service coordinators are responsible for referral and other activities to assist families in identifying available service providers, and for coordinating, facilitating and monitoring early intervention services to ensure services are delivered timely. New sections are added as section 69-4.6(c)(5)(6) and (9) to require service coordinators to conduct follow-up activities to ensure services are provided, inform families of their rights and procedural safeguards, and coordinate the funding sources for services.

Revisions to § 69-4.11, on IFSPs, are made in multiple sections. Subparagraphs (i), (ii), and (iii) are added to § 69-4.11(a)(1) to identify the exceptional family circumstances under which the 45-day timeline from referral to initial IFSP does not apply, including unavailability of the child or family or lack of parental consent to conduct the multidisciplinary evaluation after documented repeated attempts. Clarification is provided in § 69-4.11(a)(7) and (9), consistent with federal requirements, that all members of IFSP team, which includes the EIO and the parent and other members specified in regulation, must agree on the IFSP for the plan to be deemed final.

Consistent with federal regulation, § 69-4.11(a)(10)(iv) is amended to require that the IFSP includes, for children who are remaining in the EIP beyond their third birthday, pre-literacy, language, and numeracy skills as developmentally appropriate for the child. Section 69-4.11(a)(10)(viii) is amended to require the IFSP to include, to the extent appropriate, a statement of other services, including medical services, that the child and family needs or is receiving through other sources but are not required or funded by the early intervention program, and a description of the steps the services coordinator or family may take to assist the child and family in securing those other services. To comply with federal regulation and PHL § 2545(10), § 69-4.11(a)(10)(x) is amended to indicate that the projected dates for initiation of services must be as soon as possible but no later than 30 days after the parent provides written consent for the services; and, new (i) is added to indicate that if the parent and other members of the IFSP team determine IFSP services must be appropriately initiated more than 30 days after the written parental consent is obtained, the services must be delivered no later than 30 days after the projected date of initiation of those services in the IFSP.

Finally, § 69-4.11(a)(10)(a)(xiii)(1), (2) and (4) governing transition activities are amended as follows: section 69-4.11(a)(10)(a)(xiii)(1) is amended to conform with federal regulations to specify the transition plan is a component of the IFSP and must include the services needed to facilitate the child's transition to other services. Section 69-4.11(a)(10)(a)(xiii)(1) and (2) are revised to reflect amendments to PHL § 2548 which places upon the service coordinator the responsibility for notifying the committee on preschool special education (CPSE) of a child's potential eligibility for services under Education Law § 4410, unless the parent objects; and, for referring the child to the CPSE with parental consent. Section 69-4.11(a)(10)(a)(xiii)(4) is revised to reflect amendments to PHL § 2548 which require the service coordinator to convene a transition conference, with parental consent, to discuss services and program options, establish a transition plan, and set forth timelines for convening this conference.

Section 69-4.11(a)(10)(xiii)(a)(1) is amended to conform to federal regulations and to clarify when notification is required to the CPSE.

Regulations governing the systems complaint process at § 69-4.17 are amended to conform to federal regulations with respect to the filing of complaints as follows: section 69-4.17(i) permits an individual to contact the Department on an informal basis to obtain assistance in resolving any concerns or complaint related to the delivery of early intervention services; section 69-4.17(i)(1)(i) clarifies complaints must be submitted in writing; section 69-4.17(i)(1)(ii) adds a new limitation of one year in which to file a complaint; section 69-4.17(i)(1)(iii) requires a complainant to forward a copy of the complaint to the early intervention official, any provider(s) who is the subject of the complaint and to the child's service coordinator at the same time the complaint is submitted to the Department; new (iv) and (v) delineate new required contents of a complaint, including a statement of the alleged violation of a requirement of federal Part C Regulations or Early Intervention Public Health Law or regulations; the factors on which the complaint is based; and the signature and contact information of the complainant. Section 69-4.17(i)(1)(v) requires that a complaint alleging a violation with respect to a specific child must include, the name, date of birth and address of the child; the name of the provider, service coordinator and municipality serving the child; a description of the nature and facts surrounding the complaint, and a proposed resolution to the extent known at the time the complaint is filed.

Amendments to § 69-4.17(i)(3) ensures complainants are informed of the opportunity to submit additional information regarding the alleged violation; the option to engage in mediation; the right of the complainant to receive a written decision; and, the opportunity for the subject of the complaint to respond to the complaint. As required under federal regulation, language regarding confidentiality for the complainant is removed from § 69-4.17(i)(3)(iii). New § 69-4.17(i)(4) permits extension of the complaint timeline under certain conditions; and renumbered § 69-4.17(i)(5)(i) affords the subject of a complaint the opportunity to respond to the complaint. Section 69-4.17(i)(5)(ii) allows the Department to conduct an on-site investigation of the complaint, if necessary. Section 69-4.17(i)(4)(i)(a) is repealed, removing the requirement to provide justification if the Department does not complete an on-site component of the complaint investigation. Section 69-4.17(i)(6) specifies the corrective action the Department may require in response to an investigation of a complaint, including technical assistance or other actions described by the Department. New § 69-4.17(i)(7-9) specifies procedures when a written complaint received is also the subject of an impartial hearing. New § 69-4.17(i)(10) clarifies that all parties, including parents, may request assistance from the Department in resolving concerns or problems related to the delivery of early intervention services, provided that the party is notified of the availability of complaint procedures upon receipt of the request by the Department.

Section 69-4.20, which sets forth procedures for the transition of children from the Early Intervention Program to other early childhood services is amended as follows: to conform to amendments to PHL § 2548, the responsibility for transition of a child from the EIP to preschool special education programs and services is transferred from the EIO to the child's service coordinator. The following amendments are made for conformance with federal regulations: section 69-4.20(a) is amended to clarify that a

transition plan is developed as part of the IFSP for every child exiting the EIP; section 69-4.20(a)(1) specifies the timeframes for convening a transition conference for a child potential eligible for preschool services; section 69-4.20(a)(2) adds a new requirement that reasonable efforts be made to convene a transition conference for a child not potentially eligible for preschool services to discuss other appropriate services the child may receive; section 69-4.20(a)(3) clarifies that all meetings to discuss transition must meet the requirements for IFSP meetings in § 69-4.11(a)(2-5); section 69-4.20(a)(3) requires the IFSP be developed with the child's family and specifies the required contents of the transition plan.

New § 69-4.20(b)(1)(iv) is added to require the service coordinator to confirm the transmission of the notification of a child's potential eligibility for services under § 4410 of the Education Law. Section 69-4.20(b)(5) is amended to clarify timelines for the transition conference for a child potentially eligible for services under § 4410 of the Education Law.

Section 69-4.30(c)(3), on reimbursement for early intervention services, is amended to authorize a service coordination rate methodology on a per month, per week, and/or service component basis with prior written notice to Early Intervention Officials.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The Early Intervention Program (EIP) is established in Title II-A of Article 25 of the Public Health Law (PHL) and implements Part C of the federal Individuals with Disabilities Education Act (IDEA). Title 34 of the Code of Federal Regulation, Part 303, regulates the implementation of Part C of IDEA and provides standards to ensure compliance with IDEA. PHL§ 2550(1) establishes the Department of Health (Department) as the lead agency responsible for the general administration and supervision of providers and services under the EIP. PHL § 2550(2) authorizes the Department to establish standards for evaluators, service coordinators and providers of early intervention services and requires the Department to monitor agencies, institutions and organizations providing early intervention services to ensure compliance with such standards. PHL § 2559-b authorizes the Commissioner of Health (Commissioner) to adopt regulations necessary to carry out the EIP.

Legislative Objectives:

The legislative objectives of the EIP include providing a coordinated, comprehensive array of services that are in compliance with federal and state statute, and federal regulation to enhance the development of infants and toddlers with disabilities, and minimize the need for later special education services for children served under the program.

Needs and Benefits:

Revisions to federal regulation at 34 CFR, Part 303, adopted October 28, 2011, to implement the 2004 reauthorization of the IDEA, require corresponding changes in state regulation in order to conform to IDEA. In addition, amendments to PHL enacted as part of the 2012-2013 State Budget require revision to EIP regulation to conform regulations to amended statute. Revisions to 10 NYCRR 69-4 are needed to ensure that early intervention services are delivered consistent with PHL and federal statute and regulation. The proposed rule will conform state regulations to federal regulations governing definitions, referral, service coordination, individualized family service plans (IFSP), state complaint procedures, and transition; and where applicable, with amendments to PHL relevant to these sections. The proposed rule to allow for per month, per week, and/or service event billing for service coordination will result in efficiencies in that service coordinators would no longer be required to track billable service coordination activities.

Costs:

Costs to Regulated Parties:

No additional cost for providers of EIP services or service coordination is anticipated to result from the proposed rule. The proposed rules conform state regulations to requirements in federal and state statutes and federal regulations, already in effect governing the program.

The proposed rule to allow for per month, per week, and/or service event billing for service coordination should result in a cost savings to regulated parties by eliminating the current requirement to track billable service coordination activities.

Costs to the Agency, the State and Local Governments for the Implementation of and Continuing Compliance with the Rule:

The proposed rules will result in no costs for the agency or state and local governments for implementation and continuing compliance with the rules.

The proposed rule to allow for per month, per week, and/or service event billing for service coordination should result in a cost savings to regulated parties by eliminating the current requirement to track billable service coordination activities.

Local Government Mandates:

The proposed rule does not impose any new duty upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

Paperwork burden will be substantially reduced by revising service coordination reimbursement from a 15-minute increment to a fixed payment methodology. Providers will be required to report activities in order to receive payments, but in a manner that is more efficient than the current system of tracking each minute spent.

Paperwork requirements will be increased for complainants who file systems complaints, as complainants will be required to copy and send the complaint to several parties. The procedures for submission of complaints are consistent with requirements in federal regulation.

Duplication:

The proposed rules do not duplicate, overlap, or conflict with relevant rules and other legal requirements of the state and federal government.

Alternatives:

There are no alternatives for sections of the proposed rule pertaining to definitions, referral, service coordination, individualized family service plans (IFSP), state complaint procedures, and transition. Amendments to these sections are necessary to comply with recently-adopted federal regulations and amendments to state law.

The Department presented the proposed regulations to the Early Intervention Coordinating Council on June 9, 2014. The EICC recommended alternative procedures to state complaint procedures to make clear that any party, including a parent, may communicate with the Department to request assistance in resolving a concern without formally filing a complaint. The proposed rule includes these alternative procedures.

The Department completed a review of current reimbursement methodology through a contract with Public Consulting Group, Inc. (PCG) and with the advice and assistance of a Reimbursement Advisory Panel of the EICC during the period 2009-2011. The Department has selected the proposed methodology best suited to achieve efficient and effective delivery of service coordination services, reduce the administrative burden to regulated parties, and maintain the quality of the program.

Federal Standards:

The proposed rules do not exceed any minimum standards of the federal government and will continue to keep the state in compliance with federal standards.

Compliance Schedule:

The sections of the proposed rules pertaining to definitions, referral, service coordination, individualized family service plans (IFSP), state complaint procedures, and transition will be effective immediately upon adoption. These sections conform current regulation to existing requirements in federal regulation and state statute.

The Department anticipates implementing the proposed reimbursement methodology for service coordination upon approval by the Division of Budget of service coordination rates and Center for Medicare & Medicaid Services (CMS) approval of the Medicaid State Plan Amendment (SPA). A SPA is required by CMS when the Department seeks to revise the reimbursement methodology of Early Intervention Program services provided to Medicaid recipients.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Achievement and Investment in Merit Scholarship (NY-AIMS)

I.D. No. ESC-46-15-00001-E
Filing No. 941
Filing Date: 2015-11-02
Effective Date: 2015-11-02

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

Action taken: Addition of section 2201.16 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-g

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2015 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides New York high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in New York State. Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

Purpose: To implement The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

Text of emergency rule: New section 2201.16 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.16 The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

(a) Definitions. As used in section 669-g of the Education Law and this section, the following terms shall have the following meanings:

(1) "Good academic standing" shall have the same meaning as set forth in section 665(6) of the education law.

(2) "Grade point average" shall mean the student's numeric grade calculated on the standard 4.0 scale.

(3) "Program" shall mean The New York State Achievement and Investment in Merit Scholarship codified in section 669-g of the education law.

(4) "Unmet need" for the purpose of determining priority shall mean the cost of attendance, as determined for federal Title IV student financial aid purposes, less all federal, State, and institutional higher education aid and the expected family contribution based on the federal formula.

(b) Eligibility. An applicant must:

(1) have graduated from a New York State high school in the 2014-15 academic year or thereafter; and

(2) enroll in an approved undergraduate program of study in a public or private not-for-profit degree granting post-secondary institution located in New York State beginning in the two thousand fifteen-sixteen academic year or thereafter; and

(3) have achieved at least two of the following during high school:

(i) Graduated with a grade point average of 3.3 or above;

(ii) Graduated with a "with honors" distinction on a New York State regents diploma or receive a score of 3 or higher on two or more advanced placement examinations; or

(iii) Graduated within the top fifteen percent of their high school class, provided that actual class rank may be taken into consideration; and

(4) satisfy all other requirements pursuant to section 669-g of the education law; and

(5) satisfy all general eligibility requirements provided in section 661 of the education law including, but not limited to, full-time attendance, good academic standing, residency and citizenship.

(c) Distribution and priorities. In each year, new awards made shall be proportionate to the total new applications received from eligible students enrolled in undergraduate study at public and private not-for-profit degree granting institutions. Distribution of awards shall be made in accordance with the provisions contained in section 669-g(3)(a) of the education law within each sector. In the event that there are more applicants who have the same priority than there are remaining scholarships or available funding, awards shall be made in descending order based on unmet need established at the time of application. In the event of a tie, distribution shall be made by means of a lottery or other form of random selection.

(d) Administration.

(1) Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) Recipients of an award shall:

(i) request payment annually at such times, on forms and in a manner specified by the corporation;

(ii) receive such awards for not more than four academic years of undergraduate study, or five academic years if the program of study normally requires five years as defined by the commissioner pursuant to Article 13 of the education law; and

(iii) provide any information necessary for the corporation to determine compliance with the program's requirements.

(e) Awards.

(1) The amount of the award shall be determined in accordance with section 669-g of the education law.

(2) Disbursements shall be made annually to institutions on behalf of recipients.

(3) Awards may be used to offset the recipient's total cost of attendance determined for federal Title IV student financial aid purposes or may be used in addition to such cost of attendance.

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 January 30, 2016.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer The New York State Achievement and Investment in Merit Scholarship (NY-AIMS), hereinafter referred to as "Program", is codified within Article 14 of the Education Law. In particular, Part Z of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-g to the Education Law. Subdivision 6 of section 669-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly

carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-g to create The New York State Achievement and Investment in Merit Scholarship (NY-AIMS). The objective of this Program is to grant merit-based scholarship awards to New York State high school graduates who achieve academic excellence.

Needs and benefits:

The cost to attain a postsecondary degree has increased significantly over the years; alongside this growth, the financing of that degree has become increasingly challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. All federal student financial aid and a majority of state student financial aid programs are conditioned on economic need. Despite stagnant growth in household incomes, there continues to be far fewer academically-based financial aid programs, which are awarded to students regardless of assets or income. This has resulted in more limited financial aid options for those who are ineligible for need-based aid. Concurrently, greater numbers of students are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with student loan debt averaging $29,400. Many of these students feel burdened by their college loan debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement.

This Program cushions the disparate growth in the cost of a postsecondary education by providing New York State high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in the State for up to four years of undergraduate study (or five years if enrolled in a five-year program). Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17.

Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is $2.5 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 669-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal definitions/methodology concerning unmet need, expected family contribution, and cost of attendance.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

EMERGENCY RULE MAKING

New York State Get on Your Feet Loan Forgiveness Program

I.D. No. ESC-46-15-00002-E

Filing No. 942

Filing Date: 2015-11-02

Effective Date: 2015-11-02

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

Action taken: Addition of section 2201.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-g

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or Income Based Repayment (IBR) program, which cap a federal student loan borrower's payments at 10 percent of discretionary income, and apply for this program within two years after graduating from college. Eligible applicants will have up to twenty-four payments made on their

behalf towards their federal income-based repayment plan commitment. For those students who graduated in December 2014, their first student loan payment will become due upon the expiration of their grace period in June 2015. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that timely payments can be made on behalf of program recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Get on Your Feet Loan Forgiveness Program.

Purpose: To implement the New York State Get on Your Feet Loan Forgiveness Program.

Text of emergency rule: New section 2201.15 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.15 New York State Get on Your Feet Loan Forgiveness Program.

(a) Definitions. As used in section 679-g of the education law and this section, the following terms shall have the following meanings:

(1) "Adjusted gross income" shall mean the income used by the U.S. Department of Education to qualify the applicant for the federal income-driven repayment plan.

(2) "Award" shall mean a New York State Get on Your Feet Loan Forgiveness Program award pursuant to section 679-g of the education law.

(3) "Deferment" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.

(4) "Delinquent" shall mean the failure to pay a required scheduled payment on a federal student loan within thirty days of such payment's due date.

(5) "Forbearance" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.

(6) "Income" shall mean the total adjusted gross income of the applicant and the applicant's spouse, if applicable.

(7) "Program" shall mean the New York State Get on Your Feet Loan Forgiveness Program.

(8) "Undergraduate degree" shall mean an associate or baccalaureate degree.

(b) Eligibility. An applicant must satisfy the following requirements:

(1) have graduated from a high school located in the State or attended an approved State program for a State high school equivalency diploma and received such diploma. An applicant who received a high school diploma, or its equivalent, from another state is ineligible for a Program award;

(2) have graduated and obtained an undergraduate degree from a college or university located in the State in or after the two thousand fourteen-fifteen academic year;

(3) apply for this program within two years of obtaining such undergraduate degree;

(4) not have earned a degree higher than an undergraduate degree at the time of application;

(5) be a participant in a federal income-driven repayment plan whose payment amount is generally ten percent of discretionary income;

(6) have income of less than fifty thousand dollars;

(7) comply with subdivisions three and five of section 661 of the education law;

(8) work in the State, if employed. A member of the military who is on active duty and for whom New York is his or her legal state of residence shall be deemed to be employed in NYS;

(9) not be delinquent on a federal student loan or in default on a student loan made under any statutory New York State or federal education loan program or repayment of any New York State award; and

(10) be in compliance with the terms of any service condition imposed by a New York State award.

(c) Administration.

(1) An applicant for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) A recipient of an award shall:

(i) request payment at such times, on such forms and in a manner as prescribed by the corporation;

(ii) confirm he or she has adjusted gross income of less than fifty thousand dollars, is a resident of New York State, is working in New York State, if employed, and any other information necessary for the corporation to determine eligibility at such times prescribed by the corporation. Said submissions shall be on forms or in a manner prescribed by the corporation;

(iii) notify the corporation of any change in his or her eligibility status including, but not limited to, a change in address, employment, or income, and provide the corporation with current information;

(iv) not receive more than twenty four payments under this program; and

(v) provide any other information or documentation necessary for the corporation to determine compliance with the program's requirements.

(d) Amounts and duration.

(1) The amount of the award shall be equal to one hundred percent of the recipient's established monthly federal income-driven repayment plan payment whose payment amount is generally ten percent of discretionary income and whose payment is based on income rather than loan debt.

(2) In the event the established monthly federal income-driven repayment plan payment is zero or a federal borrower benefit is rendered under which no repayment is required, the applicant shall not qualify for a Program award.

(3) Disbursements shall be made to the entity that collects payments on the federal student loan or loans on behalf of the recipient on a monthly basis.

(4) A maximum of twenty-four payments may be awarded, provided the recipient continues to satisfy the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(e) Disqualification. A recipient shall be disqualified from receiving further award payments under this program if he or she fails to satisfy any of the eligibility requirements or fails to respond to any request for information by the corporation.

(f) Renewed eligibility. A recipient who has been disqualified pursuant to subdivision (e) may reapply for this program and receive an award if he or she satisfies all of the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(g) Repayment. A recipient who is not a resident of New York State at the time a payment is made under this program shall be required to repay such payment or payments to the corporation. In addition, at the corporation's discretion, a recipient may be required to repay to the corporation any payment made under this program that, at the time payment was made, should have been disqualified pursuant to subdivision (e). If a recipient is required to repay any payment or payments to the corporation, the following provisions shall apply:

(1) Interest shall begin to accrue on the day such payment was made on behalf of the recipient. In the event the recipient notifies the corporation of a change in residence within 30 days of such change, interest shall begin to accrue on the day such recipient was no longer a New York State resident.

(2) The interest rate shall be fixed and equal to the rate established in section 18 of the New York State Finance Law.

(3) Repayment must be made within five years.

(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, waive or defer payment, extend the repayment period, or take such other appropriate action.

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 January 30, 2016.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Get on Your Feet Loan Forgiveness Program ("Program") is codified within Article 14 of the Education Law. In particular, Part C of Chapter 56 of the Laws of 2015 created the Program by adding a new section 679-g to the Education Law. Subdivision 4 of section 679-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to

propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 679-g to create the "New York State Get on Your Feet Loan Forgiveness Program" (Program). The objective of this Program is to ease the burden of federal student loan debt for recent New York State college graduates.

Needs and benefits:

More than any other time in history, a college degree provides greater opportunities for graduates than is available to those without a postsecondary degree. However, financing that degree has also become more challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. More students than ever are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with debt, which averages $29,400. Many of these students feel burdened by debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement. To ensure that student debt is manageable, the federal government enacted income-driven repayment plans, such as the Pay as You Earn (PAYE) plan, which caps a federal student loan borrower's payments at 10 percent of income.

Although New York's public colleges and universities offer among the lowest tuition in the nation, currently the average New York student graduates from college with a four-year degree saddled with more than $25,000 in student loans. Mounting student debt makes it difficult for recent graduates to deal with everyday costs of living, which often increases the amount of credit card and other debt they must take on in order to survive. To help mitigate the disparate growth in the cost of financing a postsecondary education, this Program offers financial aid relief to recent college graduates by providing up to twenty-four payments towards an eligible applicant's federal income-based student loan repayment plan commitment. Students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter, who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or applicable federal Income Based Repayment (IBR) program, and apply for this Program within two years after graduating from college are eligible for this Program.

Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is $5.2 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the U.S. Department of Education with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government. Since this Program is intended to supplement federal repayment programs, efforts were made to align the Program with the federal programs.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits the State as well.

Department of Motor Vehicles

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Hearings for Persons Who Persistently Evade the Payment of Tolls

I.D. No. MTV-46-15-00003-P

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

Proposed Action: Amendment of Part 127 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215 and 510(3)(d)

Subject: Hearings for persons who persistently evade the payment of tolls.

Purpose: To hold hearings for persons subject to a registration suspension due to persistently evading the payment of tolls.

Text of proposed rule: A new section 127.14 is added to read as follows:

127.14 Non-payment of tolls

(a) This section applies to hearings related to the failure to pay tolls, fees, or other charges or the failure to have such tolls, fees or other charges dismissed or transferred in response to five (5) or more notices of violation or other process issued within an eighteen (18) month period charging the registrant of a motor vehicle with a violation of toll collection regulations.

(b) Upon receipt from a tolling authority, in such form and manner as the Commissioner shall prescribe, that the registrant of a motor vehicle has failed to pay tolls, fees, or other charges or failed to have such tolls, fees or other charges dismissed or transferred in response to five (5) or more notices of violation or other process issued within an eighteen (18) month period, arising out of violations resulting from toll transactions not occurring on the same day, the Commissioner shall issue a proposed suspension of such person's registration. Such person shall be advised of the right to request a hearing before an administrative law judge, prior to such proposed suspension taking effect.

(c) If such person makes a timely request for a hearing, such suspension shall be held in abeyance pending such hearing. Failure to provide a timely response to such notice shall be deemed a waiver of such hearing, and the proposed suspension shall take effect at the time set forth in such notice. Such notice shall advise the registrant of the penalties enforceable under the law for driving without a valid registration.

(d) Any suspension issued pursuant to this section shall remain in effect until the tolling authority advises, in such form and manner that the Commissioner shall prescribe, that such person has responded to such notices of violation and has paid any unpaid tolls, fees, or other charges to the tolling authority.

(e) For the purposes of this section, "tolling authority" shall mean every public authority which operates a toll highway, bridge and/or tunnel facility as well as the Port Authority of New York and New Jersey, a bi-state agency as created by compact set forth Chapter 154 of the Laws of 1921.

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

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). VTL section 510(3)(d) authorizes the Commissioner to permissively suspend the registration of a person for habitual or persistent violations of the VTL, or of any lawful ordinance, rule or regulation made by local authorities in relation to traffic.

2. Legislative objectives: The Legislature enacted VTL section 510(3)(d) to authorize the Commissioner of Motor Vehicles to suspend or revoke the license or registration of persons who commit persistent violations of the VTL, or of any lawful ordinance, rule or regulation made by local authorities in relation to traffic. "Local authorities," as defined in VTL section 122, includes the New York State Thruway Authority and every bridge authority and bridge and tunnel authority as well as every "similar body or person having authority to enact laws or regulations relating to traffic under the constitution and laws of this state." Under this authority, the Commissioner is authorized to take action against persons who consistently flaunt the regulations of public authorities related to the payment of tolls. The proposed rule accords with this legislative objective by authorizing the Commissioner to suspend a person's registration, after an opportunity to be heard, if such person persistently fails to pay tolls, fees or other charges assessed by a public authority.

3. Needs and benefits: The proposed rule is necessary to deter the non-payment of tolls by providing a meaningful mechanism to take action against individuals that persistently evade the payment of tolls and associated fees. Under this proposal, if a motor vehicle registrant fails to pay tolls, fees, or other charges in response to five or more notices of violation or other process issued within an eighteen month period, arising out of toll transactions not occurring on the same day, such registrant's motor vehicle registration may be suspended. Prior to the suspension taking effect, the registrant may request a hearing before a DMV administrative law judge. If the registrant requests a hearing, the suspension will be held in abeyance until the conclusion of the hearing. Failure to respond to the notice of suspension/hearing will be deemed a waiver of the hearing and the suspension will take effect as prescribed in the notice. The suspension will remain in effect until the tolling authority notifies the DMV that the registrant has paid the outstanding tolls, fees or other charges. It is important to note that before the DMV becomes involved in this process, the tolling authorities will have sent the toll violators one or two notices for each toll violation advising them of the amount owed, how to pay, and how to dispute the alleged violation. If the violator fails to pay the tolls, fees or other charges or have such tolls, fees or charges dismissed or transferred in response to the multiple notices, the tolling authority will refer him/her to the DMV.

The "tolling authorities" include the New York State Thruway Authority (NYSTA), the Port Authority of New York and New Jersey (PANYNJ), the New York State Bridge Authority (NYSBA) and the Triborough Bridge and Tunnel Authority (TBTA), which have jurisdiction over 17 bridges, 4 tunnels and the Thruway system across the State. Over 820 million trips were taken through the authorities' tolling sites in 2014. As a sample of a persistent challenge, in 2014 alone, NYSTA had 202,832 instances of non-payment of tolls in response to violation notices, while the PANYNJ had 638,104 such instances and TBTA had 483,016 such instances, for a total of 1,292,613. In terms of five or more unpaid toll violations within an 18 month period, NYSTA reports 22,000 cases, the PANYNJ 4,472 and TBTA 8,500, for a total of approximately 34,972 cases. The economic cost to the authorities is significant: the tolling authorities lose about 16.5 million dollars annually in revenue due to toll evasion. Since toll revenue is used to maintain and improve the infrastructure of these frequently used highways, tunnels, and bridges and, in TBTA's case, to provide support for the capital projects and operations of the Metropolitan Transportation Authority's mass transit system, the toll evaders pass the burden of maintaining the infrastructure and supporting transit mass to law abiding citizens who pay the tolls.

Currently, there are no teeth to enforce against persons who persistently fail to pay tolls. Although violators are referred to a collection agency in some instances, the collection rates are negligible. This proposal establishes a meaningful process to both deter toll evasion and encourage persons to pay delinquent tolls.

4. Costs:

a. to regulated parties: This proposal does not impose new costs on registrants who fail to pay tolls. Such registrants will be required to pay the tolls and fees required by the authorities in order to prevent the suspension of their registrations or in order for their registrations to be reinstated.

b. cost to the State, the agency and local governments: This proposed rule will impose no costs on local governments.

The DMV will use existing resources to hold administrative hearings. TBTA, NYSTA and PANYNJ will incur costs associated with programming changes and additional personnel needs. Specific costs are yet to be determined.

c. source: DMV's Safety Hearing Bureau, TBTA, NYSTA and PANYNJ.

5. Local government mandates: The proposed rule will not impact local governments.

6. Paperwork: The proposed rule will require DMV to develop a notice to advise registrants that their registrations will be suspended for failure to pay tolls unless such registrants request an administrative hearing.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: The tolling authorities previously submitted legislative proposals to address the issue of non-payment, but such proposals were not enacted by the Legislature. A no action alternative was not considered.

9. Federal standards: The rule does not exceed any Federal standards.

10. Compliance schedule: Implementation of this regulation is scheduled for April of 2016.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposed rulemaking would permit the Department of Motor Vehicles to suspend the registrations of registrants who have failed to pay tolls, fees or other charges, after an opportunity to be heard. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-24-15-00008-P	June 17, 2015

Department of State

EMERGENCY RULE MAKING

Rules Relating to Insurance and Bond Requirements

I.D. No. DOS-38-15-00003-E
Filing No. 940
Filing Date: 2015-10-30
Effective Date: 2015-10-30

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

Action taken: Repeal of section 160.9; and addition of new section 160.9 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

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

Specific reasons underlying the finding of necessity: The Department of State ("Department") is charged, inter alia, with the enforcement of New York General Business Law ("NY GBL") Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect those inextricably entwined in the industry. Consistent with this legislative intent of Article 27, the Department is empowered to issue regulations which protect the general welfare of the public, including workers employed by business owners. Notwithstanding existing laws and regulations, a number of businesses have taken unfair advantage of a significant number of licensed workers who contribute to the community and economy. The ease with which some establishments have been able to deprive workers of fair wages and other rights is due in part to inadequate protections. On July 15, 2015 Governor Cuomo signed into law new legislation (S.5966) which among other things established new penalties for operating an appearance enhancement business without appropriate wage coverage. This rulemaking is re-adopted on an emergency basis to further the legislative intent of provide adequate protections to workers.

To help ensure that workers receive wages that are legally due, new bonding and insurance requirements are needed. The enhancement of public safety, health and general welfare necessitates the promulgation of this regulation on an emergency basis. The Department finds that by imposing new bonding and insurance provisions potential abuses by unscrupulous business owners will be reduced and hardworking employees will be protected. The original emergency rule on this matter, filed on May 18, 2015, was superseded by a similar but different emergency rulemaking on June 10, 2015, the text of which first appeared in the July 1, 2015 edition of the State Register. On September 4, 2015, the Department re-adopted the June 10th regulation and simultaneously filed a Notice of Proposed Rulemaking. This current emergency rulemaking is the second re-adoption of the emergency rule that has been in effect since June 10th.

Subject: Rules relating to insurance and bond requirements.

Purpose: To enhance protections to workers by adding new provisions requiring wage coverage.

Text of emergency rule: *19 NYCRR § 160.9 Bond or liability insurance.*

(a) An owner must maintain proof of minimum financial security in the following amounts:

(1) for accident and professional liability, at least $25,000 per individual occurrence and $75,000 in the aggregate; and

(2) for payment of wages and remuneration legally due employees who provide nail specialty services pursuant to the following schedule:

(i) if owner employs the equivalent of two to five full time individuals who provide nail specialty services, at least $25,000 or in such other amount as directed by the Secretary;

(ii) if owner employs the equivalent of six to ten full time individuals who provide nail specialty services, at least $40,000 or in such other amount as directed by the Secretary;

(iii) if owner employs the equivalent of 11 to 25 full time individuals who provide nail specialty services, at least $75,000 or in such other amount as directed by the Secretary; or

(iv) if owner employs the equivalent of 26 or more full time individuals who provide nail specialty services, at least $125,000 or in such other amount as directed by the Secretary.

(b) Such proof may be satisfied by purchasing:

(1) accident and professional liability insurance, or general liability insurance; or

(2) a bond with a corporate surety, from a company authorized to do business in this state, payable in favor of the people of the state of New York; or

(3) any combination of (1) or (2) as provided in this Subdivision provided that the coverage amounts set forth in Subdivision (a) of this Section are satisfied.

(c) Proof of bond and liability insurance coverage, as applicable, must be filed with the Secretary and may be terminated only in accordance with the following provisions:

(1) A bond shall not be cancelled, revoked, or terminated by the owner, nor shall the owner take action that would result in the cancellation, revocation, or termination of such bond, except after notice to, and with the consent of, the Secretary at least forty-five days in advance of such cancellation, revocation, or termination. The bond shall include a provision requiring the surety to provide forty-five days' notice to the Secretary prior to cancelling the bond.

(2) A liability insurance policy obtained pursuant to this Section shall not be cancelled, revoked, or terminated by the owner, nor shall the owner take action that would result in the cancellation, revocation, or termination of such insurance policy, except after notice to the Secretary at least forty-five days in advance of such cancellation, revocation, or termination, in a form prescribed by the Secretary.

(d) Proof of such bond or liability insurance policy must be maintained on the business premises. Such proof shall be accessible by all employees at all times that the business is open.

(e) An owner will be permitted to maintain a bond or liability insurance policy as required by former Section 160.09 until June 30, 2015. All owners shall comply with the provisions of this Section on or after July 1, 2015.

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. DOS-38-15-00003-EP, Issue of September 23, 2015. The emergency rule will expire December 28, 2015.

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th FL., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law ("GBL") §§ 402(5); 404 and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: "adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state." In addition, Sections 405(1) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry. Section 405(2) requires an appearance enhancement licensee to be bonded or insured.

2. Legislative Objectives:

Article 27 of the GBL was enacted, inter alia¸ to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing measures to protect members of the public, including those who work in the industry. Consistent with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

It has come to the attention of the Department that a number of appearance enhancement businesses may be engaging in exploitive practices to deprive employees who provide nail specialty services of wages due. Individuals providing nail specialty services to the public have been particularly impacted. While the regulations of the Department, in accord with statutory mandate, have long required bonding or insurance for the protection of the public welfare, the Department finds that new and more particularized bonding and insurance requirements are needed to help ensure that employees that provide nail specialty services receive the wages and benefits they have earned. After consulting with the Depart-

ment of Labor and advocacy groups, it was determined that this regulation is needed to help protect the wellbeing of employees who provide nail specialty services to the public.

4. Costs:

a. Costs to regulated parties:

Prior regulatory requirements were primarily concerned with liability coverage, whether by bond or insurance. The majority of appearance enhancement business owners satisfied their obligations by obtaining an insurance policy in the required amount of $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement and adds a new requirement that the business' payment of wages and remuneration legally due employees who provide nail specialty services be guaranteed in amounts keyed to the number of such individuals employed by the business owner and the amount of hours that these employees work on a weekly basis. Therefore, the cost to the regulated parties is the cost of acquiring the wage guarantee. The Department is informed that for purchasers in good credit standing, the cost of acquiring a "wage bond" is likely to be 2 - 4% of the amount of the bond. Thus, a surety bond in the amount of $25,000 (2 – 5 employees) would range between $500 and $1,000. Businesses employing more individuals are required to maintain greater coverage. Bond amounts and cost of acquisition are as follows: $40,000 for 6 -10 individuals, $800-$1,600; $75,000 for 11 – 25 individuals, $1,500 - $3,000, and $125,000 for 26 or more individuals, $2,500 - $5,000. The Department notes that specific costs will vary depending largely upon the credit worthiness of the owner applying for the necessary coverage, accordingly costs are not expected to be the same for every business.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate any additional costs to implement the rule. Existing staff will manage new filing requirements.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule requires a licensee to file proof of its bond and insurance coverage with the Secretary and to notify the Secretary of the bond or insurance policy's impending cancellation.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to protect the general welfare of a significant population of practitioners who have been deprived of legally due wages.

9. Federal Standards:

The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule:

As this rule was previously adopted on an emergency basis and currently in effect, the Department is not providing for a compliance period and this emergency re-adoption is to take effect immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

In addition to continuing the requirement that appearance enhancement business owners acquire and maintain liability insurance, this rulemaking requires appearance enhancement business owners to acquire and maintain a guarantee by a surety or insurer for the business' payment of wages and remuneration legally due employees. The rule will protect employees who provide nail specialty services from the exploitive and pernicious practice of wage theft. There are approximately 30,000 owners that may be subject to this rule. Compliance is required depending upon the numbers of persons employed who provide nail specialty services, and the number of hours per week that they work.

2. Compliance requirements:

Prior regulatory requirements provided that appearance enhancement business owners provide liability coverage, whether by bond or insurance, in the amount or $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement, and adds a new requirement that the business' payment of wages and remuneration legally due employees and providers of appearance enhancement services be guaranteed in amounts keyed to the number of individuals who provide nail specialty services that are employed by the business owner and the number of hours that they work on a weekly basis. The rule requires a licensee to file its bond and insurance, as applicable, with the Secretary and to notify the Secretary of any impending cancellation of the bond or insurance. Additionally, the rule continues the current requirement that owners maintain proof of such coverage at the licensed business premises.

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

Prior regulatory requirements were primarily concerned with liability coverage, whether by bond or insurance. The majority of appearance enhancement business owners satisfied their obligations by obtaining an insurance policy in the required amount of $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement and adds a new requirement that the business' payment of wages and remuneration legally due employees who provide nail specialty services be guaranteed in amounts keyed to the number of such individuals employed by the business owner and the amount of hours that these employees work on a weekly basis. Therefore, the cost to the regulated parties is the cost of acquiring the wage guarantee. The Department is informed that for purchasers in good credit standing, the cost of acquiring a "wage bond" is likely to be 2 -4% of the amount of the bond. Thus, a surety bond in the amount of $25,000 (2 – 5 employees) would range between $500 and $1,000. Businesses employing more individuals are required to maintain greater coverage. Bond amounts and cost of acquisition are as follows: $40,000 for 6 -10 individuals, $800 -$1,600; $75,000 for 11 – 25 individuals, $1,500 - $3,000, and $125,000 for 26 or more individuals, $2,500 - $5,000. The Department notes that specific costs will vary depending largely upon the credit worthiness of the owner applying for the necessary coverage, accordingly costs are not expected to be the same for every business.

5. Economic and technological feasibility:

The amount of coverage required and thus, the cost of acquiring such coverage, have been keyed to the relative size of the business. The smallest business identified, one that employees 2-5 individuals, may expend as little as $500 to comply with new "wage bond" requirement. Although additional collateral may be required to secure the bond, the Department believes it is both economically and technically feasible to comply with this rule.

6. Minimizing adverse impact:

The Department did not identify any alternatives that would achieve the results of the proposed rule and also be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor and several advocacy groups and finds that this rule is necessary for the wellbeing of those who engage in appearance enhancement practices.

7. Small business and local government participation:

The Department, in conjunction with other state agencies, has consulted with small business interests, both businesses and organizations that may be affected by this rule. Although this particular proposal was not presented, businesses were, generally, supportive and amenable to the changes discussed.

8. Compliance:

As stated in the emergency rule, itself, compliance will be required by July 1, 2015.

9. Cure period:

As this rule was previously adopted on an emergency basis and currently in effect, this emergency re-adoption is to take effect immediately. It is noted however that to provide effect to the legislative intent behind (S5966-2015) the Department will stay the imposition of penalties until the sixtieth day after the department of financial services has certified in writing to the secretary of state that any bonds or liability insurance that is required by the department of state is readily available to the businesses from the market place. The Department is aware that by the time this notification is published, such period would have lapsed, but for completeness of the regulatory record, is mentioned.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to appearance enhancement businesses that are licensed pursuant to Article 27 of the General Business Law. There are approximately 30,000 owners across New York State that may be subject to this rule. Licensed owners are responsible for complying with this rule.

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

Prior regulatory requirements provided that appearance enhancement business owners provide liability coverage, whether by bond or insurance, in the amount or $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement, and adds a new requirement that the business' payment of wages and remuneration legally due individuals who practice nail specialty services be guaranteed in amounts keyed to the number of individuals who provide nail specialty services that are employed by the business owner and the number of hours that they work on a weekly basis. The rule requires a licensee to file its bond and insurance, as applicable, with the Secretary and to notify the Secretary of any impending cancellation of the bond or insurance. Additionally, the rule continues the current requirement that the owners maintain evidence of such coverage at the licensed business premises. No

different or additional compliance requirements apply to businesses located in rural areas.

3. Costs:

Prior regulatory requirements were primarily concerned with liability coverage, whether by bond or insurance. The majority of appearance enhancement business owners satisfied their obligations by obtaining an insurance policy in the required amount of $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement and adds a new requirement that the business' payment of wages and remuneration legally due employees who provide nail specialty services be guaranteed in amounts keyed to the number of such individuals employed by the business owner and the amount of hours that these employees work on a weekly basis. Therefore, the cost to the regulated parties is the cost of acquiring the wage guarantee. The Department is informed that for purchasers in good credit standing, the cost of acquiring a "wage bond" is likely to be 2 -4% of the amount of the bond. Thus, a surety bond in the amount of $25,000 (2 – 5 employees) would range between $500 and $1,000. Businesses employing more individuals are required to maintain greater coverage. Bond amounts and cost of acquisition are as follows: $40,000 for 6 -10 individuals, $800 -$1,600; $75,000 for 11 – 25 individuals, $1,500 - $3,000, and $125,000 for 26 or more individuals, $2,500 - $5,000. The Department notes that specific costs will vary depending largely upon the credit worthiness of the owner applying for the necessary coverage, accordingly costs are not expected to be the same for every business.

4. Minimizing adverse impact:

The Department has consulted with Department of Labor and several advocacy groups, but did not identify any alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance. Businesses in rural areas will not be impacted any more or less than businesses in other areas.

5. Rural area participation:

The Department, in conjunction with other state agencies, has consulted with business interests which may be affected by this rule. Publication of this rule in the New York State Register will provide notice to those in rural areas and afford everyone an opportunity to comment. The Department has posted a copy of this rule on the Department's website, which will provide additional opportunity for rural area participation.

Job Impact Statement

1. Nature of impact:

This rulemaking will help to insure the payment of wages lawfully due and owing to individuals who provide nail specialty services. Insomuch as this rulemaking will help protect workers, the Department believes that it will have a positive impact on jobs and employment opportunities. Specifically, more workers may seek employment in this industry if they know that their wages will now be guaranteed.

2. Categories and numbers affected:

There are approximately 30,000 owners in New York State that may be subject to this rule.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to protect the general welfare of a significant population of individuals who have been deprived of legally due wages. The Department has consulted with Department of Labor and several advocacy groups, but did not identify any alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

Assessment of Public Comment

The Department has not received formal comments with respect to this rulemaking, but has conducted multiple public outreach events wherein Department staff addressed questions from the community regarding general applicability of the proposed rule. The Department is named in a lawsuit challenging, in part, the validity of this rulemaking. The Department denies the allegations made in the lawsuit and has filed opposition papers vigorously defending the validity of the rule.

None of the questions raised at the outreach events, or legal and factual arguments made in the legal papers filed against the Department, proposed any alternatives that could be incorporated into the rule. However, for completeness, the Department provides the following summary of the issues raised in the lawsuit and at the public outreach events.

A lawsuit challenging the validity of this rulemaking was commenced on September 30, 2015. Petitioners argue, among other things: (1) the rule is invalid because the Department did not provide a factual basis for adopting on an emergency basis in compliance with SAPA; and (2) the rule is discriminatory because it imposes a disproportionate impact on Asian Americans.

The Department's filings related to this rulemaking complied with all statutory and regulatory requirements. Petitioners do not offer alternatives other than nullification of the rule itself; therefore, the arguments or commentary related to the rulemaking process cannot be incorporated into the rule.

The Department finds the allegations that the rule is discriminatory to be without merit. Petitioners' legal and factual arguments do not offer alternatives other than nullification of the rule itself; therefore, these allegations cannot be incorporated into the rule.

The Department has considered any and all remaining allegations made in the lawsuit and likewise finds them to be without merit.

As mentioned above, the Department participated in several community outreach events and discussed this proposed rule with interest groups, business owners, and members of the Governor's Task Force to Combat Worker Abuse in the Nail Salon Industry. During these discussions, the Department received informal remarks concerning the purposed rule; but no proposed alternatives.

EMERGENCY RULE MAKING

Personal Protective Equipment

I.D. No. DOS-38-15-00004-E
Filing No. 939
Filing Date: 2015-10-30
Effective Date: 2015-10-30

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

Action taken: Amendment of sections 160.11 and 160.20 of Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

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

Specific reasons underlying the finding of necessity: The Department of State ("Department") is charged, inter alia, with the enforcement of New York General Business Law ("NY GBL") Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect those who practice in the industry. Consistent with the legislative intent of Article 27, the Department is empowered to issue regulations which protect the general welfare of the public, including those who provide nail care services. New information regarding the practice of nail specialty indicates that many practitioners are at risk for preventable disease and injury because of the lack of readily available protective gear.

To help ensure that workers are better protected, the Department is readopting these emergency health and safety regulations. The enhancement of public safety, health and general welfare necessitates the promulgation of these regulations on an emergency basis. The Department finds that imposing new requirements and clarifying existing regulations will protect the approximately 162,000 licensed cosmetologists and nail specialists in New York. The original emergency rule on this matter, filed on May 18, 2015, was superseded by a similar but different emergency rulemaking on June 10, 2015, the text of which first appeared in the July 1, 2015 edition of the State Register. On September 4, 2015, the Department re-adopted the June 10th regulation and simultaneously filed a Notice of Proposed Rulemaking. This current emergency rulemaking is the second re-adoption of the emergency rule that has been in effect since June 10th.

Subject: Personal protective equipment.

Purpose: To require the provision of personal protective equipment.

Text of emergency rule: Section 160.11. Owner responsibilities

(a) An owner [, an area renter or both] shall be responsible for the proper conduct of the licensed business and for the proper provision of appearance enhancement services to the public by its employees or operators.

(b) An owner [, an area renter or both] shall be responsible for compliance with all applicable health and sanitary codes, and all statutory and regulatory requirements with respect to the practices of the occupation and business prescribed by this Part.

(c) An owner shall be responsible for maintaining the following equipment at each workstation, to be made available, upon request and without cost, to each person providing nail care services who uses such workstation:

(1) A properly fitting N-95 or N-100 respirator, approved by the National Institute for Occupational Safety and Health ("NIOSH"), for each individual who uses such workstation, to reduce inhalation of dust and particulate matter;

(2) Protective gloves made of nitrile, or other similar non-permeable material for workers with a sensitivity to nitrile gloves, in quantities sufficient to allow each individual providing nail care services to have a new pair of gloves for each customer served; and

(3) Eye protection sufficient to protect from splashes when pouring or transferring potentially hazardous chemicals from bulk containers or when preparing potentially hazardous chemicals for use in nail care services.

(d) The requirements of Subdivisions (a) and (b) were in effect prior to the filing of this emergency regulation, and remain in continuous full force and effect. Subdivision (c) of this Section shall take effect on June 15, 2015.

160.20 Hygienic practices.

(a) Cotton applicators may be used and must be stored in a closed container or sealed bag.

(b) A clean sheet of paper or a clean towel not previously used for any purpose shall be placed on the table or headrest before any client reclines on a table or chair.

(c) Cloth towels may be used once then bagged, machine washed and dried.

(d) A paper strip or clean towel shall be placed completely around the neck of each client before an apron or any other protective device is fastened around the neck.

(e) All practitioners and nail care clients must wash hands with soap and water before each client service.

(f) All sharp or pointed equipment shall be stored when not in use so as not to be accessible to consumers.

(g) All fluids, semifluids and powders must be dispensed with a shaker, dispenser pump or spray type container. All creams, lotions and other cosmetics used for clients must be kept in closed containers and dispensed with disposable applicators. When only a portion of a preparation is to be used on a client, it shall be removed from the container in such a way as not to contaminate the remaining portion.

(h) All practitioners shall have access to and may use a properly fitted N-95 or N-100 respirator, provided by the owner and approved by the National Institute for Occupational Safety and Health ("NIOSH"), in accordance with manufacturer's specifications when buffing or filing artificial nails or using acrylic powder.

(i) All practitioners shall have access to and may wear gloves, provided by the owner, when handling potentially hazardous chemicals or waste and during cleanup, or when performing any procedure that has a risk of breaking a customer's skin.

(j) All practitioners shall have access to and may wear eye protection, provided by the owner, when pouring or transferring potentially hazardous chemicals from bulk containers and when preparing potentially hazardous chemicals for use in nail care services.

(k) The requirements of Subdivisions (a) through (g) were in effect prior to the filing of this emergency regulation, and remain in continuous full force and effect. Subdivisions (h), (i), and (j) of this Section shall take effect on June 15, 2015.

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. DOS-38-15-00004-EP, Issue of September 23, 2015. The emergency rule will expire December 28, 2015.

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th FL., NY, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law ("GBL") §§ 402(5); 404; 404(b) and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: "adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state." In addition, Sections 405(1) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry. Specifically, 404-b requires all owners and operators of appearance enhancement businesses that practice nail specialty to make available, upon request, gloves and facemasks for nail specialty licensees who work in such businesses.

2. Legislative Objectives:

Article 27 of the GBL was enacted, inter alia¸ to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing protective measures. Consistent with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

This rule is needed to implement provisions of the GBL, specifically sections 404 and 404-b. The Department finds that these regulations, which clarify existing requirements relating to availability of personal protective equipment will further the legislative intent of Section 404-b of the GBL.

4. Costs:

a. Costs to regulated parties:

Businesses which offer nail care services will be required pursuant to this rule to have available gloves, respirators and sufficient eye protection for individuals who practice nail specialty services. The Department estimates the following costs to businesses: 1) a box of 100 disposable nitrile gloves will cost approximately $15.00; 2) a box of 20 approved respirators will cost approximately $15.00; and 3) sufficient eye protection will cost approximately $3.00 per employee.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate any additional costs to implement the rule.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

This rule does not impose any new paperwork requirement.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is needed to protect the general welfare of approximately 162,000 individuals who practice nail specialty services.

9. Federal Standards:

The proposed rulemaking is necessary to implement the provisions of existing law and standards.

10. Compliance Schedule:

As this rule was previously adopted on an emergency basis and currently in effect, the Department is not providing for a compliance period and this second emergency adoption is to take effect immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule requires the provision of personal protective equipment. Businesses that offer nail care services will be required to provide such equipment as provided for by this rule to individuals who practice nail specialty services without cost. There are approximately 30,000 owners that are potentially subject to this rule.

2. Compliance requirements:

The rule implements statutory requirements established under Section 404-b of Article 27 of the General Business Law. Owners subject to this rule will be required to provide gloves, respirators and sufficient eye protection to individuals who practice nail specialty services. The rule does not impose reporting or recordkeeping on owners.

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

The Department estimates the following costs to businesses: 1) a box of 100 disposable nitrile gloves will cost approximately $15.00; 2) a box of 20 approved respirators will cost approximately $15.00; and 3) sufficient eye protection will cost approximately $3.00 per employee.

5. Economic and technological feasibility:

This proposal is economically and technically feasible. Based on the Department's cost estimates and that the personal protective equipment provided for by this rule is readily available in retail stores and through online purchasing, businesses should have no difficulty complying with this rule.

6. Minimizing adverse impact:

The Department did not identify any feasible alternatives that would achieve the results of the proposed rule and also be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, and several advocacy and business groups and finds this rule is necessary to implement existing law relating to the provision and availability of personal protective equipment.

7. Small business and local government participation:

The Department, in conjunction with other state agencies, has consulted with small business interests that may be affected by this rule. In addition, the Department has conducted significant outreach to inform the public regarding this rule, including posting this rule on the Department's website and participating in a multiple public forums detailing, inter alia, the

purpose of this rule and compliance requirements. Publication of the rule in the State Register will provide further notice of the proposed rulemaking to all interested parties. Additional comments will be received and entertained during the public comment period associated with this rulemaking.

8. Compliance:

Owners subject to this rule are required to comply immediately.

9. Cure period:

As this rule was previously adopted on an emergency basis and currently in effect, the Department is not providing for a compliance period and this second emergency adoption is to take effect immediately.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to appearance enhancement businesses that are licensed pursuant to Article 27 of the General Business Law. There are approximately 30,000 owners across New York State that may be subject to this rule. Licensed owners throughout the state, including those in rural areas, are responsible for complying with this rule.

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

The rule implements statutory requirements established under Section 404-b of Article 27 of the General Business Law. The rule does not impose reporting or recordkeeping on owners. Further, there are no additional professional services required as a result of this regulation. No different or additional requirements are applicable exclusively to rural areas of the state.

3. Costs:

The Department estimates the following costs to businesses: 1) a box of 100 disposable nitrile gloves will cost approximately $15.00; 2) a box of 20 approved respirators will cost approximately $15.00; and 3) sufficient eye protection will cost approximately $3.00 per employee.

4. Minimizing adverse impact:

The proposed rulemaking will implement existing law relating to provision and use of personal protective equipment for nail care providers throughout the state, including rural areas. The Department has consulted with Department of Labor, Department of Health as well as several advocacy groups, but did not identify any feasible alternatives that would achieve the results of the proposed rules and also be less restrictive and less burdensome in terms of compliance.

5. Rural area participation:

No significant comments have been received regarding this rulemaking. Publication of the Notice in the State Register will provide notice to all interested parties, including those in rural areas. Additional comments received on this rulemaking will be considered and assessed during the Proposed Rule Making process on this matter.

Job Impact Statement

1. Nature of impact:

This rulemaking applies to all appearance enhancement owners and individuals who offer nail specialty services. Pursuant to this rule, owners are required to provide at no cost, gloves, respirators and eye protection while offering certain services. Though the rule is intended to implement existing law, the Department finds that it will also improve the wellbeing of those working in the nail care industry, and as such the rule will have a positive impact on jobs and employment opportunities.

2. Categories and numbers affected:

There are approximately 30,000 owners which would potentially be subject to this rulemaking. Further, there are approximately 162,000 licensees who offer services specified by this rule.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or lawful employment opportunities.

4. Minimizing adverse impact:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to implement existing law through rules regarding availability and use of personal protective equipment. The Department has consulted with Department of Labor, Department of Health and several advocacy groups, but did not identify any alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Posting Requirements

I.D. No. DOS-35-15-00003-A
Filing No. 934
Filing Date: 2015-10-29
Effective Date: 2015-11-18

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

Action taken: Addition of section 160.10(e) to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; and General Business Law, sections 402(5) and 404

Subject: Posting requirements.

Purpose: To require posting of a Bill of Rights sign at all businesses where nail specialist services are offered.

Text or summary was published in the September 2, 2015 issue of the Register, I.D. No. DOS-35-15-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.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 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Mandatory Public Posting of Notices of Violations

I.D. No. DOS-35-15-00004-A
Filing No. 933
Filing Date: 2015-10-29
Effective Date: 2015-11-18

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

Action taken: Addition of section 160.39 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; and General Business Law, sections 402(5) and 404

Subject: Mandatory public posting of Notices of Violations.

Purpose: To inform the public that the Department of State has commenced an enforcement proceeding against an unlicensed business.

Text or summary was published in the September 2, 2015 issue of the Register, I.D. No. DOS-35-15-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.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 2018, 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.

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Storage of Furniture and Personal Belongings

I.D. No. TDA-46-15-00005-P

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

Proposed Action: Amendment of sections 352.6(f) and 397.5(k) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 303(1)(k)

Subject: Storage of furniture and personal belongings.

Purpose: Provide clarification regarding allowances for the storage of furniture and personal belongings.

Text of proposed rule: Subdivision (f) of section 352.6 of Title 18 NYCRR is amended to read as follows:

(f) An allowance for storage of furniture and personal belongings [shall] *must* be made when it is [essential,] *necessary* for circumstances such as relocation, eviction or temporary shelter, so long as eligibility for public assistance continues and so long as the circumstances necessitating the storage continue to exist*, and no other storage options exist*.

(1) Furniture to be stored must not exceed the rooms and items in schedule SA-4a of section 352.7(a)(2) of this Part. Furniture to be stored cannot exceed the amount needed for the household size.

(2) Personal belongings to be stored cannot exceed the amount needed for the household size and should be reasonable in number and total volume. For the purpose of storage, personal belongings are those items not found in schedule SA-4a of section 352.7(a)(2) of this Part, and are limited to the following:

(i) Legal and identification documents;

(ii) Kitchen cookware, appliances, dishware, glassware and utensils;

(iii) Bedding and towels;

(iv) Clothing of the household members;

(v) Items needed for employment, excluding business inventory except as otherwise provided for in section 352.12(a)(2) of this Part;

(vi) Household electronic devices;

(vii) Items needed for educational purposes; and

(viii) Personal keepsakes.

(3) Such allowance is limited to the furniture and personal belongings, as provided for in paragraphs (1) and (2) of this subdivision, in the household's possession at the time the circumstance necessitating the storage occurred.

Subdivision (k) of section 397.5 of Title 18 NYCRR is amended to read as follows:

(k) Storage of furniture and personal belongings. The cost of [essential] *necessary* storage of furniture and personal belongings during relocation, eviction or residence in temporary shelter must be met for [as] *so* long as the circumstances necessitating the storage and eligibility for emergency assistance for adults continue to exist*, and no other storage options exist*.

(1) Furniture to be stored must not exceed the rooms and items in schedule SA-4a of section 352.7(a)(2) of this Title. Furniture to be stored cannot exceed the amount needed for the household size.

(2) Personal belongings to be stored cannot exceed the amount needed for the household size and should be reasonable in number and total volume. For the purpose of storage, personal belongings are those items not found in schedule SA-4a of section 352.7(a)(2) of this Title, and are limited to the following:

(i) Legal and identification documents;

(ii) Kitchen cookware, appliances, dishware, glassware and utensils;

(iii) Bedding and towels;

(iv) Clothing of the household members;

(v) Items needed for employment, excluding business inventory except as otherwise provided for in section 352.12(a)(2) of this Title;

(vi) Household electronic devices;

(vii) Items needed for educational purposes; and

(viii) Personal keepsakes.

(3) Such allowance is limited to the furniture and personal belongings, as provided for in paragraphs (1) and (2) of this subdivision, in the household's possession at the time the circumstance necessitating the storage occurred.

Text of proposed rule and any required statements and analyses may be obtained from: Matthew L. Tulio, NYS Office of Temporary and Disability Assistance, 40 North Pearl Street, Albany, New York 12243-0001, (518) 486-9568, email: Matthew.tulio@otda.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:

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties. SSL § 34(3)(f) requires the Commissioner of OTDA to establish regulations for the administration of public assistance and care within the State. Within Title 1 of Article 5 of the SSL, which sets forth the general provisions for assistance and care, SSL § 131(1) requires social services districts (SSDs), insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL. There is no specific statutory authority in this Title governing the administration of an allowance for storage. Within Title 8 of Article 5 of the SSL, which governs emergency assistance for aged, blind and disabled persons, SSL § 303(1)(k) provides for an allowance for essential storage of furniture and personal belongings during such circumstances as relocation, eviction or temporary shelter.

2. Legislative Objectives:

It is the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations, and policies so that adequate provision is made for those persons unable to provide for themselves, so that, whenever possible, such persons can be restored to conditions of self-support and self-care.

3. Needs and Benefits:

The proposed regulatory amendment of 18 NYCRR §§ 352.6(f) and 397.5(k) limits the amounts and types of furniture and personal belongings that can be stored during relocation, eviction or residence in temporary shelter. Currently, there is no limit to the amount and types of furniture and personal belongings that can be stored. Families in need of storage are often facing critical housing issues. Most often these families have become homeless and are living in emergency temporary housing. In this most vulnerable time of their lives, the need for storage of household items is important not only to keep the family household items intact, but also to give peace of mind to the family members that their belongings are safe and being looked after.

The lack of clarity and specificity of the current regulations regarding the payment of storage has created significant issues for the SSDs in urban areas that are required to provide payment for these services. Some urban SSDs have had problems with the clients expanding their storage capacity while in receipt of assistance and with the lack of accountability for the items that are being stored and the items necessary to the household. There have also been concerns expressed by some urban SSDs that recipients with multiple storage units are not maximizing the available space of each storage unit and unnecessarily increasing the cost to the urban SSDs and the State.

The amended regulations would provide consistency and clarity to the eligibility and receipt of storage fee payments. These regulations would help recipients understand when the SSDs must provide storage and what items can be stored under State rules. The regulations would also enhance the ability of the SSDs to provide cost effective storage and ensure that a uniform policy is applied statewide.

4. Costs:

There would be no new cost associated with this change, insofar as the proposed regulatory amendments would be consistent with current statutory requirements. SSD staff members are already required to review applications for storage fees to determine eligibility for such payments. If the proposed amendments were adopted, the current SSD staff members would simply apply the regulatory requirements to the existing processes.

5. Local Government Mandates:

The proposed regulatory amendments would limit the amount and types of furniture and personal belongings that could be stored and would not require any new resources, procedures, or expertise to support the change. As noted above, the SSD staff would apply the new rules to their existing processes.

6. Paperwork:

There would be no additional reporting requirements or additional paperwork required to support the proposed regulatory amendments.

7. Duplication:

The proposed regulatory amendments would not duplicate, overlap or conflict with any existing State or federal regulations.

8. Alternatives:

The alternative is to leave the current 18 NYCRR §§ 352.6(f) and 397.5(k) intact. However, the amendments are needed to provide consistency and clarity to the current regulations.

9. Federal Standards:

The proposed regulatory amendments would not conflict with federal standards for use of resources.

10. Compliance Schedule:

The proposed regulatory amendments would be effective sixty days after filing. OTDA would issue an administrative directive (ADM) advising SSDs of the regulation filing date.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed regulatory amendments would have an impact on the social services districts (SSDs) in urban areas which tend to issue storage fees more frequently and for longer periods of time, than SSDs in rural areas. The proposed amendments would not impose any compliance requirements on small businesses.

2. Compliance requirements:

There would be no additional reporting requirements for SSDs or new paperwork required to support the proposed regulatory amendments. The proposed rule would not impose any programs upon the SSDs. SSDs, particularly those in urban areas, would simply need to apply the amended regulations to their existing processes. The proposed amendments would not impose any reporting, recordkeeping or other affirmative acts upon small businesses.

3. Professional services:

The proposed amendments would not require SSDs to hire additional professional services. As noted above, the current SSD staff members would simply apply the new rules to this existing process. The proposed amendments would not require small businesses to hire additional professional services.

4. Compliance costs:

The SSDs would not incur initial capital costs or annual costs to comply with the proposed regulations. The proposed regulatory amendments would not impose compliance costs on small businesses.

5. Economic and technological feasibility:

The SSDs currently have the economic and technological ability to comply with these proposed regulations. Small businesses would not need to implement or enforce the proposed regulations.

6. Minimizing adverse impact:

The proposed regulations would not have an adverse impact upon the SSDs. However, to assist the SSDs in implementing the changes, the Office of Temporary and Disability Assistance would issue an administrative directive advising SSDs of the regulatory amendments. It is anticipated that the proposed regulations could have a minimal, indirect impact on small businesses if they are renting storage space to recipients of storage fees who are not in compliance with the proposed amendments. However, to minimize this impact, persons who are out of compliance with the proposed amendments may be able to adjust their storage arrangements and again qualify for storage fees.

7. Small business and local government participation:

SSDs are in favor of the proposed amendments. The revised storage fees requirements would help ensure that a uniform storage fee policy is applied statewide. Also it is anticipated that the public, as well as small business owners, would be supportive of regulatory amendments that would help prevent the unnecessary use of resources.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the proposed regulatory amendments would neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon public or private entities in rural areas. Social services districts (SSDs) in rural areas issue storage fees less frequently and for shorter periods of time, than SSDs in urban areas. In addition, rural SSDs have not had problems with clients expanding their storage capacity while in receipt of assistance or with the lack of accountability for the items that are being stored. As it was evident from the proposed regulatory amendments that they would not have an adverse impact or impose reporting, recordkeeping, or other compliance requirements on private entities or SSDs in rural areas, no further measures were needed to ascertain those facts and, consequently, none were taken.

Job Impact Statement

A Job Impact Statement is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments that they would not have a substantial adverse impact on jobs and employment opportunities in the private sector, in the social services districts (SSDs), or in the State. The proposed regulatory amendments would impose no compliance requirements on private sector businesses, and they would not substantively affect the jobs of the employees of the SSDs or the State. The purpose of the proposed regulatory amendments is to revise the current allowance for storage afforded under 18 NYCRR §§ 352.6(f) and 397.5(k) in order to limit the amount and types of furniture and personal belongings to be stored during relocation, eviction or residence in temporary shelter.

Thus, the proposed regulatory amendment would not have an adverse impact on jobs and employment opportunities in New York State.