

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.

Education Department

EMERGENCY RULE MAKING

Clinically Rich Graduate Level Teacher Preparation Program

I.D. No. EDU-13-11-00001-E

Filing No. 461

Filing Date: 2011-05-24

Effective Date: 2011-05-24

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

Action taken: Amendment of section 52.21(b)(5) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 208, 210, 214, 216, 224, 305(1), (2), (7), 3004(1) and 3006(1)

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

Specific reasons underlying the finding of necessity: At its April 2010 meeting, the Board of Regents established certain eligibility requirements to participate in the clinically rich teacher preparation pilot program, including certain curriculum requirements, a clinical component, mentoring and training requirements and requirements for the conferral of degrees upon completion of the program.

The regulation adopted in April 2010 provided, among other things, that completion of the pilot programs would lead to a professional Master of Arts in Teaching degree. Some higher education institutions offering graduate teacher education programs do not have the authority to confer a Master of Arts in Teaching degree. In order to provide these institutions with flexibility to confer other appropriate degrees, the proposed amendment authorizes higher education institutions to

confer one of the specialized degrees in education prescribed in section 3.50(b)(5) of the Rules of the Board of Regents, a Master of Professional Studies degree or a Master of Arts or Master of Science degree as prescribed in section 3.50(a) of the Rules of the Board of Regents. For institutions, other than institutions of higher education, that meet the requirements in section 52.21(b)(5) of the Commissioner's regulations, the Regents will confer a Master of Arts in Teaching degree upon their candidates.

Emergency action is necessary at the May Board of Regents meeting in order to ensure that the rule remains continuously in effect until it can be permanently adopted at the June Regents meeting.

Subject: Clinically rich graduate level teacher preparation program.

Purpose: Amend degree conferring requirements of pilot programs to provide program providers flexibility to confer degrees Master in Arts.

Text of emergency rule: Clause (d) of subparagraph (iv) paragraph (5) shall be added to subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, effective May 24, 2011, to read as follows:

(d) Degree.

(1) Successful completion of the pilot program shall lead to [a professional Master of Arts in Teaching degree] *either one of the specialized master's degrees in education prescribed in section 3.50(b)(5) of the Rules of the Board of Regents, a Master of Professional Studies degree or a Master of Arts or Master of Science degree as prescribed in section 3.50(a) of the Rules of the Board of Regents.*

(2) Any institution that offers a program, other than an institution of higher education, shall certify to the department that the candidate has satisfactorily met the requirements of this paragraph. Upon receipt of such certification from an institution other than an institution of higher education, the Board of Regents will [issue] *confer* a professional Master of Arts in Teaching degree [to] *on* such candidate provided that the program remains in good standing with the Department.

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. EDU-13-11-00001-EP, Issue of March 30, 2011. The emergency rule will expire July 22, 2011.

Text of rule and any required statements and analyses may be obtained from: Christine Moore, NYS Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Regents to carry into effect the laws and policies of the State relating to education.

Section 208 of the Education authorizes the Regents to award and confer diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

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

Section 214 of the Education Law provides that institutions of the university shall include all secondary and higher educational institutions which are now or may hereafter be incorporated in this state, and such other libraries, museums, institutions, schools, organizations and

agencies for education as may be admitted to or incorporated by the university.

Section 216 of the Education Law authorizes the Regents to incorporate any university, college, academy, library, museum, or other institution or association for the promotion of science, literature, art, history or other department of knowledge, or of education in any way.

Section 224 of the Education Law prohibits any individual, partnership or corporation not holding university, college or other degree conferring powers by special charter from the Legislature or the Regents from conferring any degree or using the designation college or university unless specifically authorized by the Regents to do so.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by modifying the degree requirements in the Regulations of the Commissioner of Education for the clinically rich teacher preparation pilot program, by providing program providers with the flexibility to confer a degree other than the Master of Arts in Teaching degree.

3. NEEDS AND BENEFITS:

At its April 2010 meeting, the Board of Regents established certain eligibility requirements to participate in the clinically rich teacher preparation pilot program, including certain curriculum requirements, a clinical component, mentoring and training requirements and requirements for the conferral of degrees upon completion of the program.

The regulation adopted in April 2010 provided, among other things, that completion of the pilot programs would lead to a professional Master of Arts in Teaching degree. Some higher education institutions offering graduate teacher education programs do not have the authority to confer a Master of Arts in Teaching degree. In order to provide these institutions with the flexibility to confer other appropriate degrees, the proposed amendment authorizes higher education institutions to confer one of the specialized degrees in education prescribed in section 3.50(b)(5) of the Rules of the Board of Regents, a Master of Professional Studies degree or a Master of Arts or Master of Science degree as prescribed in section 3.50(a) of the Rules of the Board of Regents. For institutions, other than institutions of higher education, that meet the requirements in section 52.21(b)(5) of the Commissioner's regulations, the Regents will confer a Master of Arts in Teaching degree upon their candidates.

4. COSTS:

(a) Cost to State government: The proposed amendment will not impose any additional costs on State government, including the State Education Department.

(b) Cost to local government: The proposed amendment will not impose any additional costs on local government.

(c) Cost to private regulated parties: The proposed amendment will not impose any additional costs on private regulated parties.

(d) Costs to the regulatory agency: As stated above in Costs to State

Government, the amendment does not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any mandates on local governments.

6. PAPERWORK:

The proposed amendment does not impose any paper requirements.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There were no significant alternative proposals considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with graduate level clinically rich program requirements qualifying individuals to teach in the New York State public schools, the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the March Regents meeting, the proposed amendment will become effective on March 11, 2011.

Regulatory Flexibility Analysis

At its April 2010 meeting, the Board of Regents established certain eligibility requirements to participate in the clinically rich teacher preparation pilot program, including certain curriculum requirements, a clinical component, mentoring and training requirements and requirements for the conferral of degrees upon completion of the program.

The regulation adopted in April 2010 provided, among other things, that completion of the pilot programs would lead to a professional Master of Arts in Teaching degree. Some higher education institutions offering graduate teacher education programs do not have the authority to confer a Master of Arts in Teaching degree. In order to provide these institutions with the flexibility to confer other appropriate degrees, the proposed amendment authorizes higher education institutions to confer one of the specialized degrees in education prescribed in section 3.50(b)(5) of the Rules of the Board of Regents, a Master of Professional Studies degree or a Master of Arts or Master of Science degree as prescribed in section 3.50(a) of the Rules of the Board of Regents. For institutions, other than institutions of higher education, that meet the requirements in section 52.21(b)(5) of the Commissioner's regulations, the Regents will confer a Master of Arts in Teaching degree upon their candidates.

The proposed amendment provides flexibility to institutions of higher education that participate in the clinically rich teacher preparation pilot program. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will impact institutions that elect to offer a clinically rich teacher preparation program, which may include colleges and universities that are selected by the Board of Regents to participate in this program. These institutions may be located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed amendment authorizes higher education institutions to confer one of the specialized degrees in education prescribed in section 3.50(b)(5) of the Rules of the Board of Regents, a Master of Professional Studies degree or a Master of Arts or Master of Science degree as prescribed in section 3.50(a) of the Rules of the Board of Regents.

3. Costs:

The proposed amendment does not impose any additional costs on regulated entities.

4. Minimizing adverse impact:

Implementation of the proposed rule will not have a negative impact on entities or individuals located in rural communities. The proposed amendment is permissive in nature. Only program providers that wish to offer a clinically rich principal preparation pilot program are required to meet the new requirements for such programs.

Moreover, the proposed amendment provides flexibility to program providers located in all areas of the State, including rural areas. The proposed amendment allows institutions of higher education that are selected by the Board of Regents to participate in this pilot program to confer other appropriate degrees beyond the Master of Arts in Teaching degree.

5. Rural area participation:

The concept of the graduate level clinically rich pilot programs was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts.

Job Impact Statement

The purpose of the proposed amendment is to amend the degree requirements for the graduate level clinically rich teacher preparation pilot program to provide higher education institutions that participate in the pilot program with the flexibility to confer degrees other than a Master of Arts in Teaching degree.

Because it is evident from the nature of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Local High School Equivalency Diplomas Based Upon Experimental Programs

I.D. No. EDU-14-11-00007-E

Filing No. 459

Filing Date: 2011-05-24

Effective Date: 2011-05-24

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

Action taken: Amendment of section 100.8 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to extend for one year the provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner.

The extension will allow the continuance in New York State of the National External Diploma Program (NEDP), which is a complete assessment program that allows adults over age 21 to demonstrate and document the lasting outcomes and transferable skills for which a high school diploma is awarded. The NEDP is a competency based, applied performance assessment system which capitalizes on an adult's life experiences and uses a practical application of learning for assessment through such methods as simulations, authentic demonstration, research projects, hands-on interviews and oral interviews. An NEDP candidate must demonstrate a job skill and the competencies that align with the skills needed to function effectively in the workplace. All competencies require a 100 percent mastery.

The one year extension will ensure that all current NEDP students in the approximately 20 program sites across the State are provided with an opportunity to complete their programs and earn a local high school equivalency diploma.

Because the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action, after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202, would be the June 20-21, 2011 Regents meeting, and the pursuant to SAPA section 202, the earliest the amendment could take effect if adopted at the June Regents meeting is after publication of a Notice of Adoption in the State Register on July 15, 2011. However, the current provision in section 100.8 allowing boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs will expire on June 30, 2011. Emergency action is necessary for the preservation of the general welfare in order to prevent a lapse in this provision and ensure that NEDP students can complete their programs without disruption.

Subject: Local high school equivalency diplomas based upon experimental programs.

Purpose: To extend until 6/30/12 the provision for awarding local high school equivalency diplomas based upon experimental programs.

Text of emergency rule: Section 100.8 of the Regulations of the Commissioner of Education is amended, effective May 24, 2011, as follows:

100.8 Local high school equivalency diploma.

Boards of education specified by the commissioner may award a local high school equivalency diploma based upon experimental programs approved by the commissioner until [June 30, 2011] *June 30, 2012*, after which date such boards may no longer award a local high school equivalency diploma.

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. EDU-14-11-00007-P, Issue of April 6, 2011. The emergency rule will expire August 21, 2011.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy to extend for one year the provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner. The existing provision will otherwise sunset on June 30, 2011.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to extend for one year the provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner.

The extension will allow the continuance in New York State of the National External Diploma Program (NEDP), which is a complete assessment program that allows adults over age 21 to demonstrate and document the lasting outcomes and transferable skills for which a high school diploma is awarded. The NEDP is a competency based, applied performance assessment system which capitalizes on an adult's life experiences and uses a practical application of learning for assessment through such methods as simulations, authentic demonstration, research projects, hands-on interviews and oral interviews. An NEDP candidate must demonstrate a job skill and the competencies that align with the skills needed to function effectively in the workplace. All competencies require a 100 percent mastery.

The one year extension will ensure that all current NEDP students in the approximately 20 program sites across the State are provided with an opportunity to complete their programs and earn a local high school equivalency diploma.

4. COSTS:

- (a) Costs to State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment will not impose any costs on the State, local governments, private regulated parties or the State Education Department. It merely extends for one year the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district. It merely extends for one year an existing provision related to the issuance of a local high school equivalency diploma.

6. PAPERWORK:

The proposed amendment merely extends for one year an existing provision related to the issuance of a local high school equivalency diploma, and does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to implement Regents policy to extend for one year the provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner. The existing provision will otherwise sunset on June 30, 2011. There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

Because of the nature of the proposed amendment, which merely extends for one year the existing provision in section 100.8 of the Commissioner's Regulations, it is anticipated that school districts and boards of cooperative educational services will be able to achieve compliance with this rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely extends for one year the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and boards of cooperative educational services (BOCES) specified by the Commissioner to award a local high school equivalency diploma for adults over age 21, based upon experimental programs approved by the Commissioner, and will not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to boards of education and boards of cooperative educational services (BOCES) that are specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner. The proposed amendment will ensure that all current National External Degree Program (NEDP) students in the approximately 20 program sites across the State are provided with an opportunity to complete their programs and earn a local high school equivalency diploma.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any new compliance requirements but merely extends for one year the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment will not impose any costs on local governments. It merely extends for one year the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any costs or new technological requirements on local governments.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents. The proposed amendment does not impose any new compliance requirements or costs on local governments, but merely extends the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) that are specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment will ensure that all current National External Degree Program (NEDP) students in the approximately 20 program sites across the State are provided with an opportunity to complete their programs and earn a local high school equivalency diploma. Of these 20 sites, 12 are in rural areas.

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

The proposed amendment does not impose any new compliance requirements on rural areas but merely extends for one year the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner. The proposed amendment does not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on rural areas. It merely extends for one year the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents. The proposed amendment does not impose any new compliance requirements on rural areas, but merely extends the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment merely extends for one year the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Teachers Performing Instructional Support Services in Boards of Cooperative Educational Services

I.D. No. EDU-23-11-00003-EP

Filing No. 453

Filing Date: 2011-05-20

Effective Date: 2011-05-20

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

Proposed Action: Amendment of sections 30-1.2, 30-1.8, 30-1.9, 80-1.7 and 80-1.8 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to create new tenure areas for teachers performing instructional support services in a BOCES. The Board of Regents promulgated regulations in 2009 to permit teachers employed in instructional support service positions in BOCES and school districts to continue in their existing teacher tenure area or if newly hired, to receive tenure and seniority rights in a tenure area for which they are properly certified.

The Department has now had two years of experience under these 2009 regulations, where many reductions in force have been necessary. The BOCES have experienced many operational problems when teachers hired for their skills in an area of instructional support are bumping a teacher assigned to a classroom. In certain situations the problem is bumping in the reverse direction (from the classroom to instructional support services). These bumping actions have placed teachers into assignments for which they are not prepared. This has resulted in a proposal to create new tenure areas in BOCES to reflect the different nature of instructional support services in a BOCES setting and to adequately provide for instructional support positions on the network teams that many BOCES will provide for component districts to support the Department's Race to the Top Application.

The proposed amendment establishes additional ("new") tenure areas for BOCES that would be appropriate for the most common types of ISS assignments:

- (1) instructional support services in mathematics;
- (2) instructional support services in english language arts and literacy;
- (3) instructional support services in science;
- (4) instructional support services in special education;
- (5) instructional support services in curriculum and differentiated instruction, incorporating the analysis of student performance data;
- (6) instructional support services in the integration of technology into instructional practices;
- (7) instructional support services in technical support for bilingual and English as a second language instruction for English language learners; and
- (8) instructional support services in professional development.

The recommended action is proposed as an emergency measure given the current budget difficulties faced by BOCES in New York State and the possibility of impending lay-offs, it is critical that teachers currently serving in instructional support positions have appropriate tenure protection and that their accrued seniority rights be protected.

Subject: Teachers performing instructional support services in boards of cooperative educational services.

Purpose: Create new tenure areas for teachers performing instruction support services in boards of cooperative educational services.

Text of emergency/proposed rule: Pursuant to section 207 of the Education Law.

1. Subdivision (b) of section 30-1.2 of the Rules of the Board of Regents shall be amended, effective May 20, 2011, to read as follows:

(b) [The] *Except as otherwise provided in subdivision (c) of this section, the provisions of this Subpart shall apply to a professional educator appointed by a board of education or board of cooperative educational services for the performance of duties in instructional support services, as defined in subdivision (j) of section 30-1.1 of this Subpart, on or after August 1, 1975 as follows:*

- (1)
- (2)
- (3)
- (4)
- (5)

2. Subdivisions (c) and (d) of section 30-1.2 of the Rules of the Board of Regents shall be renumbered to subdivisions (d) and (e) of section 30-1.2, respectively, effective May 20, 2011.

3. A new subdivision (c) shall be added to section 30-1.2 of the Rules of the Board of Regents, effective May 20, 2011, to read as follows:

(c) *The provisions of this Subpart shall apply to a professional educator employed by a board of cooperative educational services to devote a substantial portion of his time to the provision of instructional support services on or after May 20, 2011 as follows:*

(1) *A professional educator employed by a board of cooperative educational services to devote a substantial portion of his time to the provision of instructional support services on May 20, 2011, who was previously appointed by the board to tenure or a probationary period in a tenure area identified in this Subpart shall either:*

(a) *continue to receive credit toward tenure and/or accrue tenure and seniority rights in his previous tenure area from the initial date of his assignment and continue to receive tenure and/or seniority rights in his previous tenure area while assigned to devote a substantial portion of his time to the provision of instructional support services; or*

(b) *if the professional educator provides knowing consent to the board of cooperative educational services to change his tenure area pursuant to section 30-1.9 of this Subpart by June 20, 2011, he may receive credit toward tenure and/or accrue tenure and seniority rights in one of the special subject tenure areas of instructional support services established in section 30-1.8 of this Subpart, from the date of his initial assignment to a position where he devoted a substantial portion of his time to the provision of such instructional support services and he shall continue to receive tenure and seniority rights in that tenure area while assigned to a position where he devotes a substantial portion of his time to the provision of instructional support services appropriate for such tenure area.*

(2) *Any board of cooperative educational services that appoints or assigns a professional educator on or after May 20, 2011 to devote a substantial portion of his time to the provision of instructional support services shall make probationary appointments and appointments on tenure in accordance with subdivision (e) of section 30-1.8 of this Subpart.*

(3) *Any board of cooperative educational services that appoints a professional educator on or after May 20, 2011 to devote a substantial portion of his time to instructional support services as a result of a board of cooperative educational services taking over a program formerly operated by a school district or a county vocational education and extension board pursuant to section 3014-a of the Education Law, shall credit the professional educator with tenure and seniority rights in the special subject tenure area for instructional support services established in subdivision (e) of section 30-1.8 of this Subpart from the initial date of his assignment to the performance of instructional support services in the school district or county vocational education and extension board and shall continue to credit the professional educator with tenure and/or seniority rights in such tenure area while he is assigned to devote a substantial portion of his time to the performance of instructional support services in such tenure area at the board of cooperative educational services.*

(4) *Any board of education that appoints a professional educator on or after May 20, 2011 to devote a substantial portion of his time to instructional support services as a result of a school district taking over a program formerly operated by a board of cooperative educational services pursuant to section 3014-b, where the professional educator is serving in an instructional support services tenure area pursuant to subdivision of section 30-1.8 of the rules of the Board of Regents, shall credit the professional educator with tenure and seniority rights in a tenure area for which he holds the proper certification as described in Section 30-1.9(b) of this subpart, from the initial date of his assignment to the performance of instructional support services in the board of cooperative educational services and shall continue to credit such professional educator with tenure and/or seniority rights in such tenure area while he is assigned to devote a substantial portion of his time to the performance of instructional support services provided that he holds the proper certification for such tenure area.*

4. Renumbered subdivision (d) of section 30-1.2 of the Rules of the Board of Regents shall be amended, effective April 12, 2011, to read as follows:

(d) Except as otherwise provided in subdivisions (b) and (c) of this section, each board of education or board of cooperative educational services shall on and after the effective date of this Subpart make probationary appointments and appointments on tenure in accordance with the provisions of this Subpart.

5. A new subdivision (e) shall be added to section 30-1.8 of the Rules of the Board of Regents, effective May 20, 2011, to read as follows:

(e) *A professional educator employed by a board of cooperative educational services to devote a substantial portion of his time to the provision of instructional support services in one of the following areas shall be deemed to serve in one of the following special subject tenure areas encompassing the duties of such subject:*

- (1) *instructional support services in mathematics;*
- (2) *instructional support services in English language arts and literacy;*
- (3) *instructional support services in science;*
- (4) *instructional support services in special education;*
- (5) *instructional support services in curriculum and differentiated instruction, incorporating the analysis of student performance data;*
- (6) *instructional support services in the integration of technology into instructional practices;*
- (7) *instructional support services in technical support for bilingual and English as a second language instruction for English language learners; and*
- (8) *instructional support services in professional development.*

6. Subdivision (b) of section 30-1.9 of the Rules of the Board of Regents shall be amended, effective May 20, 2011, to read as follows:

(b) Except as otherwise provided in subdivision (b) of section 30-1.2 of this Subpart, a board of education [or a board of cooperative educational services] shall appoint and assign a professional educator in such a manner that he shall devote a substantial portion of his time in at least one designated tenure area except that a professional educator appointed or assigned on or after May 1, 2009 to duties described in either paragraph (1) or (2) of this subdivision, shall be appointed to a tenure area for which he holds the proper certification.

(1) *A professional educator appointed or assigned to devote a substantial portion of his time to the performance of duties in instructional support services; or*

(2) *A professional educator appointed or assigned to devote a substantial portion of his time to a combination of duties in instructional support services and time in at least one designated tenure area identified in this Subpart.*

7. Subdivision (d) in section 30-1.9 of the Rules of the Board of Regents, is amended, effective May 20, 2011, to read as follows:

(d) If a professional educator possesses certification appropriate to more than a single tenure area and the board of education or board of cooperative educational services proposes at the time of initial appointment to assign such individual in such a manner that he will devote a substantial portion of his time during each of the school years constituting the probationary period in more than one of the tenure areas established by this Subpart, the board shall in its resolution of appointment designate such tenure area and shall thereafter separately confer or deny tenure to such individual in the manner prescribed by statute in each designated tenure area, *except that individuals accruing tenure and/or seniority rights in their previous tenure area for the performance of duties in instructional support services as provided for in subparagraph (a) of paragraph (1) of subdivision (c) of section 30-1.2 of this Subpart shall only accrue tenure and/or seniority rights in their previous tenure area and not in one of the instructional support service tenure areas prescribed in subdivision (e) of section 30-1.8 of this Subpart.*

8. Section 80-1.7 of the Regulations of the Commissioner of Education is amended, effective May 20, 2011, to read as follows:

Section 80-1.7 Renewal of a provisional certificate

(a) . . .

(1) [By] *Except as otherwise provided by subdivision (c) of this section, by application to the commissioner by the holder of the certificate, the commissioner may renew an expired provisional certificate in the administrative and supervisory service or the pupil personnel service on one occasion only for a period of five years from the date the renewed provisional certificate is issued, provided that the candidate has met all requirements for the permanent certificate in the certificate title of the provisional certificate, except the experience requirement. The requirements of this paragraph shall not apply to the renewal of a provisional certificate in the title school counselor. The requirements of paragraph (2) of this subdivision shall apply to the renewal of a provisional certificate in the title school counselor.*

(2) . . .

(b) . . .

(c) The commissioner shall not renew a provisional certificate in the classroom teaching service. The commissioner shall not accept an application for the renewal of a provisional *School Administrator and Supervisor* certificate [in the administrative and supervisory service] submitted to the commissioner after September 1, 2007 *unless the certificate holder has been employed in a school district or BOCES to devote a substantial portion of his time, as defined in section 30-1.1 of the Commissioner's regulations, to instructional support services as defined in section 80-5.21 of this Subpart during three of the past five school years.*

9. Subdivision (a) of section 80-1.8 of the Regulations of the Commissioner of Education, is amended, effective May 20, 2011, to read as follows:

(a) The holder of an initial certificate whose certificate has expired, and who has not successfully completed three school years of teaching experience, or its equivalent, as is required for a professional certificate, shall be issued an initial certificate on one occasion only, for a period of five years from the date of reissuance, provided that the candidate has met the requirements in subdivision (b) of this section. [The time validity of such reissued initial certificate shall not be extended, pursuant to section 80-1.6 of this Subpart.] *Notwithstanding the above, an initial certificate as a school building leader may be reissued a second time if the certificate holder has met all of the requirements for the professional certificate except the experience requirement and has been employed in a school district or BOCES to provide instructional support services as defined in section 80-5.21 of this Subpart during three of the past five school years.*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 17, 2011.

Text of rule and any required statements and analyses may be obtained from: Christine Moore, NYS Education Department, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, New York State Education Department, 89 Washington Avenue, Room 979, Albany, New York 12234, (518) 408-1189, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statute by creating new tenure areas for teachers performing instructional support services in a BOCES.

3. NEEDS AND BENEFITS:

In 2009, the Board of Regents promulgated regulations to permit teachers employed in instructional support service positions in BOCES TO accrue tenure and seniority rights in their existing teacher tenure area or if newly hired, to receive tenure and seniority rights in a tenure area for which they are properly certified. (The regulations did not impact teachers serving in New York City).

The BOCES have experienced many operational problems since 2009 with the current regulation. As a result of reductions in force, teachers hired for their skills in an area of instructional support services have been bumped by a teacher assigned to a classroom. Reductions in force have also resulted in bumping in the reverse direction (from instructional support services to the classroom). These bumping actions have placed teachers into assignments for which they are not prepared. To address these problems we propose to create new instructional support services tenure areas for BOCES to reflect the unique nature of instructional support services in a BOCES setting and to address the Network Team positions that BOCES will provide for component districts as part of the Race to the Top (RTTT) implementation.

Issue

Historically, BOCES have responded to the needs of component districts for the professional growth of district teachers through instructional support services duties designed to enhance teaching skills, including infusing technology into instruction, providing for differentiated instruction and incorporating the analysis of student performance data, and providing a variety of specialized supports.

The staff hired by a BOCES to provide these instructional support services are, in most cases, hired from outside the BOCES for their particular expertise in subject matter and the education of teachers. School districts, on the other hand, tend to identify individual members of their teaching staff who possess the needed skills to be professional developers, curriculum specialists, or have the knowledge and skills to assist other teachers in

using technology as part of their instruction to provide these services. Using existing teachers seems to work effectively in many school districts as the teachers have a desire to retain their existing tenure area and continue to earn seniority while on special assignment.

In the BOCES, the need to provide teacher growth and professional development services to component districts is increasing and the number of teachers doing instructional support services work in a BOCES will continue to increase as the RTTT initiatives are implemented, particularly with the use of the Network teams.

The regulation adopted by the Regents in 2009 is designed to fit the school district model of providing ISS and the past two years have demonstrated that this model is causing substantial operational problems and disruption for the BOCES that would jeopardize the ability of the BOCES to provide the supports needed to implement RTTT initiatives and maintain capacity to provide high quality professional development for teachers by individuals who are hired because they are particularly adept at adult education and professional development in specific content areas.

Proposal

The problems experienced with reductions in force resulting in teachers being placed into roles for which they do not possess the required knowledge or skills are of great concern for the work of the Network Teams and the BOCES professional development programs. The duties of Network Team members under RTTT are one example of Instructional Support Services work. The careful selection of properly qualified educators to assume Network Team and other Instructional Support Services duties is a critical part of the implementation of SED's RTTT program. These Network Team duties along with other Instructional Support duties are different from classroom teaching duties and BOCES teachers performing Network Team duties should not be in the same tenure areas as individual classroom teachers.

Accordingly, after consultation with all interested parties, staff propose for the Regents consideration, the creation of the following ("new") tenure areas for BOCES that would be appropriate for the most common types of ISS assignments:

- (1) instructional support services in mathematics;
- (2) instructional support services in English language arts and literacy;
- (3) instructional support services in science;
- (4) instructional support services in special education;
- (5) instructional support services in curriculum and differentiated instruction incorporating the analysis of student performance data;
- (6) instructional support services in the integration of technology into instructional practices;
- (7) instructional support services in technical support for bilingual and English as a second language instruction for English language learners; and
- (8) instructional support services in professional development.

Transition for affected teachers

Teachers who are currently performing ISS duties in a BOCES would be able to choose to either: (1) go into a newly created ISS tenure area designated by the BOCES as appropriate for their duties; or (2) stay in their existing tenure area (grandparenting provision). If the teacher chose to go into the new ISS tenure area designated by the BOCES, he or she would be eligible to carry with them the tenure and seniority previously earned for the time they spent performing those ISS duties.

New teachers hired by a BOCES to perform ISS duties after the effective date of this regulation would be appointed to an ISS tenure area as designated by the BOCES consistent with their duties determined by the BOCES.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments: The proposed amendment will not impose any additional costs on local governments, including school districts and BOCES.

(c) Costs to private regulated parties: The proposed amendment will not impose any additional costs on private regulated parties.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to boards of cooperative educational services. Therefore, the mandates in Section 3 apply to BOCES as well. The State Education Department has determined that uniform requirements are necessary to ensure the quality of the State's teaching workforce and consistency in the evaluations of teachers in the classroom teaching service across the State.

6. PAPERWORK:

In general, the amendment does not impose additional paperwork requirements upon school districts or BOCES.

7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements.

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish procedures for the evaluation of teachers.

10. COMPLIANCE SCHEDULE:

BOCES will be required to comply with the proposed amendment by its stated effective date.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment applies to boards of cooperative educational services (BOCES) and creates new tenure areas for teachers performing instructional support services. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

The proposed amendment relates to the qualifications of teachers performing instructional support services and tenure and seniority rights for teachers performing such duties in BOCES throughout the State.

1. EFFECT OF RULE:

The proposed amendment applies to BOCES located in New York State and creates new tenure areas for teachers performing instructional support services in a BOCES.

2. COMPLIANCE REQUIREMENTS:

In 2009, the Board of Regents promulgated regulations to permit teachers employed in instructional support service positions in BOCES TO accrue tenure and seniority rights in their existing teacher tenure area or if newly hired, to receive tenure and seniority rights in a tenure area for which they are properly certified. (The regulations did not impact teachers serving in New York City).

The BOCES have experienced many operational problems since 2009 with the current regulation. As a result of reductions in force, teachers hired for their skills in an area of instructional support services have been bumped by a teacher assigned to a classroom. Reductions in force have also resulted in bumping in the reverse direction (from instructional support services to the classroom). These bumping actions have placed teachers into assignments for which they are not prepared. To address these problems we propose to create new instructional support services tenure areas for BOCES to reflect the unique nature of instructional support services in a BOCES setting and to address the Network Team positions that BOCES will provide for component districts as part of the Race to the Top (RTTT) implementation.

Issue

Historically, BOCES have responded to the needs of component districts for the professional growth of district teachers through instructional support services duties designed to enhance teaching skills, including infusing technology into instruction, providing for differentiated instruction and incorporating the analysis of student performance data, and providing a variety of specialized supports.

The staff hired by a BOCES to provide these instructional support services are, in most cases, hired from outside the BOCES for their particular expertise in subject matter and the education of teachers. School districts, on the other hand, tend to identify individual members of their teaching staff who possess the needed skills to be professional developers, curriculum specialists, or have the knowledge and skills to assist other teachers in using technology as part of their instruction to provide these services. Using existing teachers seems to work effectively in many school districts as the teachers have a desire to retain their existing tenure area and continue to earn seniority while on special assignment.

In the BOCES, the need to provide teacher growth and professional development services to component districts is increasing and the number of teachers doing instructional support services work in a BOCES will continue to increase as the RTTT initiatives are implemented, particularly with the use of the Network teams.

The regulation adopted by the Regents in 2009 is designed to fit the school district model of providing ISS and the past two years have demonstrated that this model is causing substantial operational problems and disruption for the BOCES that would jeopardize the ability of the BOCES to provide the supports needed to implement RTTT initiatives and maintain capacity to provide high quality professional development for teachers by individuals who are hired because they are particularly adept at adult education and professional development in specific content areas.

Proposal

The problems experienced with reductions in force resulting in teachers being placed into roles for which they do not possess the required knowledge or skills are of great concern for the work of the Network Teams and the BOCES professional development programs. The duties of Network Team members under RTTT are one example of Instructional Support Services work. The careful selection of properly qualified educators to assume Network Team and other Instructional Support Services duties is a critical part of the implementation of SED's RTTT program. These Network Team duties along with other Instructional Support duties are different from classroom teaching duties and BOCES teachers performing Network Team duties should not be in the same tenure areas as individual classroom teachers.

Accordingly, after consultation with all interested parties, staff propose for the Regents consideration, the creation of the following ("new") tenure areas for BOCES that would be appropriate for the most common types of ISS assignments:

- (1) instructional support services in mathematics;
- (2) instructional support services in English language arts and literacy;
- (3) instructional support services in science;
- (4) instructional support services in special education;
- (5) instructional support services in curriculum and differentiated instruction incorporating the analysis of student performance data;
- (6) instructional support services in the integration of technology into instructional practices;
- (7) instructional support services in technical support for bilingual and English as a second language instruction for English language learners; and
- (8) instructional support services in professional development.

Transition for affected teachers

Teachers who are currently performing ISS duties in a BOCES would be able to choose to either: (1) go into a newly created ISS tenure area designated by the BOCES as appropriate for their duties; or (2) stay in their existing tenure area (grandparenting provision). If the teacher chose to go into the new ISS tenure area designated by the BOCES, he or she would be eligible to carry with them the tenure and seniority previously earned for the time they spent performing those ISS duties. New teachers hired by a BOCES to perform ISS duties after the effective date of this regulation would be appointed to an ISS tenure area as designated by the BOCES consistent with their duties determined by the BOCES.

3. PROFESSIONAL SERVICES:

The proposed amendment does not mandate that BOCES contract for additional professional services to comply.

4. COMPLIANCE COSTS:

In general, the proposed amendment does not impose any additional compliance costs on BOCES.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes the tenure and seniority rights for teachers employed in instructional support service positions in BOCES. Because these requirements apply to teachers and BOCES located in all areas of the State, it is not possible to exempt local governments from the proposed amendment or impose a lesser standard. Moreover, the State Education Department has determined that uniform tenure and seniority rights in such positions at a BOCES are necessary to ensure the quality of the State's teaching workforce and consistency in the application of tenure and seniority rights for such positions.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from the BOCES District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATE OF THE NUMBER OF RURAL AREAS:

The proposed amendment will affect teachers who perform instructional support services and who are employed in boards of cooperative educational services in all areas of New York State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

In 2009, the Board of Regents promulgated regulations to permit teachers employed in instructional support service positions in BOCES and school districts to accrue tenure and seniority rights in their existing teacher tenure area or if newly hired, to receive tenure and seniority rights in a tenure area for which they are properly certified. (The regulations did not impact teachers serving in New York City).

The BOCES have experienced many operational problems since 2009 with the current regulation. As a result of reductions in force, teachers hired for their skills in an area of instructional support services have been bumped by a teacher assigned to a classroom. Reductions in force have also resulted in bumping in the reverse direction (from instructional support services to the classroom). These bumping actions have placed teachers into assignments for which they are not prepared. To address these problems we propose to create new instructional support services tenure areas for BOCES to reflect the unique nature of instructional support services in a BOCES setting and to address the Network Team positions that BOCES will provide for component districts as part of the Race to the Top (RTTT) implementation.

Issue

Historically, BOCES have responded to the needs of component districts for the professional growth of district teachers through instructional support services duties designed to enhance teaching skills, including infusing technology into instruction, providing for differentiated instruction and incorporating the analysis of student performance data, and providing a variety of specialized supports.

The staff hired by a BOCES to provide these instructional support services are, in most cases, hired from outside the BOCES for their particular expertise in subject matter and the education of teachers. School districts, on the other hand, tend to identify individual members of their teaching staff who possess the needed skills to be professional developers, curriculum specialists, or have the knowledge and skills to assist other teachers in using technology as part of their instruction to provide these services. Using existing teachers seems to work effectively in many school districts as the teachers have a desire to retain their existing tenure area and continue to earn seniority while on special assignment.

In the BOCES, the need to provide teacher growth and professional development services to component districts is increasing and the number of teachers doing instructional support services work in a BOCES will continue to increase as the RTTT initiatives are implemented, particularly with the use of the Network teams.

The regulation adopted by the Regents in 2009 is designed to fit the school district model of providing ISS and the past two years have demonstrated that this model is causing substantial operational problems and disruption for the BOCES that would jeopardize the ability of the BOCES to provide the supports needed to implement RTTT initiatives and maintain capacity to provide high quality professional development for teachers by individuals who are hired because they are particularly adept at adult education and professional development in specific content areas.

The 2009 regulation, which leaves a teacher in the tenure area of his or her previous assignment or places a new Instructional Support Services Teacher in a tenure area for which they are certified, results in teachers in ISS assignments bumping into classroom assignments and vice versa. Unfortunately, the classroom teacher who bumps into an ISS position may not have the skills required to perform the ISS assignment. A teacher of English in Grade 8 may be selected to provide guidance to other teachers on the infusion of technology into their instruction, because of her exceptional knowledge of current technologies and related pedagogical issues. If there is a reduction in force in the English 7-12 tenure area and a classroom English teacher "bumps" that ISS teacher, it is quite likely that the classroom English teacher will not possess the technology skills needed for the ISS assignment.

Proposal

The problems experienced with reductions in force resulting in teachers being placed into roles for which they do not possess the required knowledge or skills are of great concern for the work of the Network Teams and the BOCES professional development programs. The duties of Network Team members under RTTT are one example of Instructional Support Services work. The careful selection of properly qualified educators to assume Network Team and other Instructional Support Services duties is a critical part of the implementation of SED's RTTT program. These Network Team duties along with other Instructional Support duties are different from classroom teaching duties and BOCES teachers performing Network Team duties should not be in the same tenure areas as individual classroom teachers.

Accordingly, after consultation with all interested parties, staff propose for the Regents consideration, the creation of the following ("new") tenure areas for BOCES that would be appropriate for the most common types of ISS assignments:

- (1) instructional support services in mathematics;
- (2) instructional support services in English language arts and literacy;
- (3) instructional support services in science;
- (4) instructional support services in special education;
- (5) instructional support services in curriculum and differentiated instruction incorporating the analysis of student performance data;
- (6) instructional support services in the integration of technology into instructional practices;

(7) instructional support services in technical support for bilingual and English as a second language instruction for English language learners; and

(8) instructional support services in professional development.

Transition for affected teachers

Teachers who are currently performing ISS duties in a BOCES would be able to choose to either: (1) go into a newly created ISS tenure area designated by the BOCES as appropriate for their duties; or (2) stay in their existing tenure area (grandparenting provision). If the teacher chose to go into the new ISS tenure area designated by the BOCES, he or she would be eligible to carry with them the tenure and seniority previously earned for the time they spent performing those ISS duties.

New teachers hired by a BOCES to perform ISS duties after the effective date of this regulation would be appointed to an ISS tenure area as designated by the BOCES consistent with their duties determined by the BOCES.

3. COSTS:

The proposed amendment will not impose any additional costs on private regulated parties.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes the tenure and seniority rights for teachers employed in instructional support service positions in BOCES. Because these requirements apply to teachers and BOCES located in all areas of the State, including rural areas, it is not possible to exempt those from rural areas from the proposed amendment or impose a lesser standard. Moreover, the State Education Department has determined that uniform tenure and seniority rights in such positions at a BOCES are necessary to ensure the quality of the State's teaching workforce and consistency in the application of tenure and seniority rights for such positions.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were also solicited from the District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators, the constituencies of which include those from rural areas.

Job Impact Statement

The purpose of the proposed amendment is to establish new tenure areas for teachers performing instructional support services who are employed in a board of cooperative educational services. The proposed amendment allows a professional educator assigned by a board of cooperative educational services to devote a substantial portion of their time to the provision of instructional support services to either continue to receive credit toward tenure and/or accrue tenure and seniority rights in their previous tenure area or if the professional educator provides knowing consent to the BOCES to change his tenure area by June 20, 2011, the professional educator may accrue credit toward tenure and/or seniority rights in one of the special subject tenure areas of instructional support services from the date of his initial assignment to a position in instructional support services.

Because it is evident from the nature of this regulation that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Annual Professional Performance Reviews for Classroom Teachers and Building Principals

I.D. No. EDU-23-11-00006-EP

Filing No. 455

Filing Date: 2011-05-20

Effective Date: 2011-05-20; except section 100.2(o) eff. 2011-07-01

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

Proposed Action: Amendment of Subpart 30-2 and section 100.2(o) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1), (2) and 3012-c(1)-(8); as added by L. 2010, ch. 103

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

Specific reasons underlying the finding of necessity: On May 28, 2010,

the Governor signed Chapter 103 of the Laws of 2010, which added a new section 3012-c to the Education Law, establishing a comprehensive evaluation system for classroom teachers and building principals. The new law requires each classroom teacher and building principal to receive an annual professional performance review (APPR) resulting in a single composite effectiveness score and a rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model)
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model)
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation

For the 2011-2012 school year, the law applies to classroom teachers in the common branch subjects, English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new law applies to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system.

By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP). Tenured teachers and principals with a pattern of ineffective teaching or performance - defined by law as two consecutive annual "ineffective" ratings - may be charged with incompetence and considered for termination through an expedited hearing process.

The law further provides that all evaluators must be appropriately trained consistent with standards prescribed by the Commissioner and that appeals procedures must be locally developed in each school district and BOCES.

Section 3012-c of the Education Law requires that any regulations needed to implement the new evaluation system be implemented no later than July 1, 2011, after consultation with an advisory committee. In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c. Throughout its deliberations, the Task Force has been supported by the active participation of teams of research advisors, and numerous experts have made presentations to the Task Force. Research and best practice examples were disseminated and discussed at length.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

The proposed regulations implement the new law, by adding a new Subpart 30-2 to the Rules of the Board of Regents to establish the requirements for the new evaluation system.

A new Subpart 30-2 is also added to the Rules of the Board of Regents to establish the requirements for the new evaluation system. Section 30-2.1 explains that during the 2011-12 school year, teachers and principals who are not covered by the new law must still be evaluated under the existing APPR regulations and districts and BOCES must comply with the requirements in Subpart 30-2 for classroom teachers and building principals covered by the new law. It also reiterates the language from the statute that says the regulations do not override any conflicting provisions of any collective bargaining agreement in effect on July 1, 2010 until the agreement expires and a successor agreement is entered into; at that point, however, the new evaluation regulations apply. In response to comments, a revision to this section was also made to clarify that nothing in the regula-

tions shall be construed to affect the statutory right of a school district or BOCES to terminate a probationary teacher or principal or to restrict a school district's or BOCES' discretion in making a tenure determination pursuant to the law.

Section 30-2.2 defines the terms used throughout the regulations.

Section 30-2.3 lists the information that every district or BOCES must include in its APPR plan.

Section 30-2.4 lays out all the requirements for evaluating classroom teachers in common branch subjects, English language arts (ELA), and math in grades 4-8 and their building principals for the 2011-12 school year. This section explains that 20 points of the evaluation will be based on student growth on State assessments and 20 points will be based on locally selected measures; explains what types of locally selected measures of student achievement may be used (first for teachers, then for principals); and describes what types of other measures of effectiveness may be used for the remaining 60 points, including observations, surveys, etc. (first for teachers, then for principals).

Section 30-2.5 lays out the requirements for evaluating all classroom teachers and building principals for the 2012-13 school year and thereafter, following the same order as the preceding section. This section explains how the requirements for the State assessment and locally selected measures subcomponents will differ, including the points assigned for each subcomponent, depending on whether the Board of Regents has approved a value-added growth model for particular grades/courses and subjects. The remaining 60 points will be assigned based on the same criteria as the preceding section.

Section 30-2.6 explains how the subcomponents should be scored and provides scoring ranges for the State assessment and locally selected measures subcomponents and the overall rating categories. Sections 30-2.7 and 30-2.8 outline the processes by which the Department will review and approve teacher and principal practice rubrics and student assessments, respectively, for use in districts' and BOCES' teacher and principal evaluation systems. Section 30-2.9 describes the requirements for evaluator training; Section 30-2.10 covers teacher and principal improvement plans; and Section 30-2.11 covers appeal procedures.

The recommended action is proposed as an emergency measure upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to timely implement the provisions of section 3012-c of the Education Law by July 1, 2011, to ensure that school districts and BOCES are given sufficient notice of the new APPR requirements and to provide school districts and BOCES with time to locally negotiate certain provisions in the proposed amendments before the 2011-2012 school year.

Subject: Annual professional performance reviews for classroom teachers and building principals.

Purpose: Establish standards and criteria for conducting annual professional performance reviews of classroom teachers and building principal.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.regents.nysed.gov/meetings): The Commissioner of Education proposes to amend section 100.2 of the Commissioner's Regulations and add a new Subpart 30-2 to the Rules of the Board of Regents, effective May 20, 2011, to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. The following is a summary of the substance of the proposed amendment.

Section 100.2(o) is amended to clarify that classroom teachers who are not subject to the provisions of Education Law section 3012-c in the 2011-2012 school year must still comply with the existing annual professional performance review set forth in section 100.2(o). A new provision was also added to section 100.2(o) to require that beginning July 1, 2011, all building principals that are not required to be evaluated under Education Law § 3012-c must be evaluated on an annual basis based on a plan agreed to by the building principal and the governing body of the school district or BOCES.

A new Subpart 30-2 is added to the Rules of the Board of Regents to establish requirements for the new annual professional performance review (APPR) system established by Education Law section 3012-c.

Section 30-2.1 sets forth applicability provisions. For the 2011-2012 school year, school districts shall ensure that the APPR of all classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight, and of all building principals of schools in which such teachers are employed, are conducted in accordance with the requirements of section 3012-c and Subpart 30-2; and that reviews of classroom teachers and building principals (other than classroom teachers in the common branch subjects or English language arts (ELA) or mathematics in grades four to eight) are conducted in accordance with section 100.2(o) of the Commissioner's regulations.

For an APPR conducted in the 2012-2013 school year and thereafter, the school district or BOCES shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of section 3012-c and Subpart 30-2. However, nothing shall be construed to preclude a school district or BOCES from adopting an APPR for the 2011-2012 school year that applies to all classroom teachers and building principals in accordance with this Subpart or for BOES, for classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight and all building principals in which such teachers are employed.

The section also provides that nothing in Subpart 30-2 shall abrogate any conflicting provisions of any collective bargaining agreement in effect on July 1, 2010 during the term of such agreement and until the entry into a successor collective bargaining agreement, at which time the provisions in Subpart 30-2 will apply.

This section further provides that nothing in the Subpart shall be construed to affect the statutory rights of a school district or BOCES to terminate a probationary teacher or principal or to restrict a school district's or BOCES' discretion in making a tenure determination pursuant to the new law.

Section 30-2.2 provides definitions for certain terms used in the Subpart.

Section 30-2.3 sets forth the content requirements for APPR plans submitted under Subpart 30-2. By September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers of common branch subjects, ELA or mathematics in grades four to eight and building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for the APPR of all of its classroom teachers and building principals. To the extent that any of the items required to be included in the plan are not finalized by such date, as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district or BOCES shall file an amended plan upon completion of such negotiations.

Section 30-2.4 sets forth requirements for evaluating classroom teachers of common branch subjects, ELA or mathematics in grades four to eight for the 2011-2012 school year. 20 points of the evaluation will be based on student growth on State assessments or other comparable measures and 20 points will be based on locally selected measures as described in the section. 60 points of the evaluation will be based on multiple measures of teacher and principal effectiveness as described in this section. A teacher's performance must be assessed based on a teacher practice rubric(s) approved by the Department. A principal's performance must be assessed based on an approved principal practice rubric. Provision is made for granting a variance for use of existing rubrics. At least 40 of the 60 points for teachers shall be based on classroom observations. At least 40 of the 60 points for principals shall be based on a broad assessment of the principal's leadership and management actions by the principal's supervisor or a trained independent evaluator.

Section 30-2.5 sets forth requirements for evaluating all classroom teachers and building principals for the 2012-2013 school year and thereafter. The section explains how the requirements for the State assessment and locally selected measures subcomponents will differ, including the points assigned for each subcomponent, depending on whether the Board of Regents has approved a value-added growth model for particular grades, courses. This section also describes the options that may be used for the State assessment subcomponent for non-tested subjects. The choice of locally selected measures and the other measures of teacher and principal effectiveness are based on the same criteria as in 30-2.4.

Section 30-2.6 describes the procedures for scoring and rating the evaluations, including a requirement that the rating category ("Highly Effective", "Effective", "Developing", or "Ineffective") assigned to teacher and building principal is determined by a single composite effectiveness score that is calculated based on the scores received by the teacher or principal in each of the subcomponents. This section prescribes specific scoring ranges for each rating category for the State assessment subcomponent and the locally selected measures subcomponent and the overall rating categories.

Section 30-2.7 describes the criteria and approval process for teacher and principal practice rubrics to be used in the evaluation of teachers and building principals.

Section 30-2.8 describes the criteria and approval process for student assessments to be used in the evaluation of teachers and building principals.

Section 30-2.9 describes requirements for the training of evaluators and the training and certification of lead evaluators.

Section 30-2.10 describes requirements for teacher and principal improvement plans.

Section 30-2.11 describes requirements for appeals procedures through which an evaluated teacher or principal may challenge their APPR.

Section 30-2.12 provides that the Department will annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests that a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school, district or BOCES identified by the Department may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, a requirement that the school district or BOCES utilize independent trained evaluators, where appropriate.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 20, 2011.

Text of rule and any required statements and analyses may be obtained from: Christine Moore, NYS Education Department, Office of Counsel, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, NYS Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 408-1189, email: regcomments@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law section 215 authorizes the Commissioner to require reports from schools under State educational supervision.

Education Law section 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES), including the use of measures of student achievement; differentiation of teacher and principal effectiveness using quality rating categories of "highly effective", "effective", "developing" and "ineffective", with explicit minimum and maximum scoring ranges for each category as prescribed in Commissioner's Regulations; use of a single composite effectiveness score which incorporates multiple measures of effectiveness related to criteria included in Commissioner's Regulations; the training of individuals conducting evaluations in accordance with Commissioner's Regulations; and implementation of improvement plans consistent with Commissioner's regulations.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies, and is necessary to implement Education Law section 3012-c by prescribing criteria for APPR of classroom teachers and building principals.

3. NEEDS AND BENEFITS:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. This evaluation system is a critical element of the Regents reform agenda—an agenda aimed at improving teaching and learning in New York and increasing the opportunity for all students to graduate from high school ready for college and careers.

A primary objective of the evaluation system is to foster a culture of continuous professional growth. The system's three components are designed to complement one another:

- Statewide student growth measures will identify those educators whose students' progress exceeds that of their peers, as well as those whose students are falling behind compared to similar students.
- Locally selected measures of student achievement will reflect local priorities, needs, and targets.
- Teacher observations, school visits, and other measures will provide educators with detailed, structured feedback on their professional practice.

Together, this information will be used to tailor professional development and support for educators to grow and improve their instructional practices, with the ultimate goal of ensuring an effective teacher in every classroom and an effective leader in every school.

4. COSTS:

a. Costs to State government: The rule implements Education Law section 3012-c and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute.

b. Costs to local government: Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

The costs discussed here are based on the following: (1) an estimated hourly rate for teachers of \$46.46 (based on an average annual teacher salary of \$66,902 divided by 1,440 hours per school year); (2) an estimated hourly rate for principals of \$71.90 (based on an average annual principal salary of \$126,544 divided by 1,760 hours per school year); and (3) an estimated hourly rate for superintendents of \$85.71 (based on a median annual superintendent of schools salary of \$150,850 divided by 1,760 hours per school year). The Department anticipates that the proposed rule will impose the following costs on school districts/BOCES. The estimated costs below assume that school districts and BOCES will need to pay for extra time for personnel at current rates. However, most districts and BOCES are or should be performing these activities currently, but the State does not have data on the amount of hours currently dedicated to these activities. Moreover, \$700 million in Race to the Top funds have been or will be made available to school districts and BOCES and portions of those monies will be available to offset some of these costs.

State Assessments or Other Comparable Measures

The statute requires that 20% of a teacher or principal's evaluation be based on student growth on State assessments or other comparable measures (increases to 25% upon implementation of a value-added growth model). There are no additional costs beyond those imposed by statute for evaluating a teacher based on State assessments.

For non-tested subjects where there is no approved growth or value-added model for such grade/subject, the proposed amendment requires the district/BOCES to evaluate teachers and principals using a State-determined district- or BOCES-wide student growth goal setting process with an approved student assessment. The Department estimates that for non-tested subjects, a teacher or principal will spend approximately 4 hours to set his/her goals for the year and that a principal/superintendent will take approximately 1 hour per year to work with a teacher/principal on the goal setting process. Based on the estimated hourly rates described above, the Department estimates that the goal-setting process will cost a school district/BOCES \$257.74 per teacher (4 teacher hours to set goals plus 1 principal hour to review goals with teacher) and \$373.31 per principal (4 principal hours to set goals plus 1 superintendent hour to review goals with principal).

The goal-setting process also requires the use of a student assessment. In core subjects where no State assessment or Regents examination exists for such grades/subjects, the district/BOCES must use the goal setting process with an approved third-party assessment (at a cost per student of \$10-\$20 per student) or a Department-approved alternative examination (which the Department expects would have no additional cost). For all other non-tested grades/subjects, districts must use the goal-setting process with either an approved third-party assessment (at a cost of \$10-\$20 per student), a district- or BOCES-created assessment or a teacher-created assessments (which the Department expects would have minimal, if any, costs).

Locally Selected Measures

An additional 20% of the evaluation must be based on locally selected measures. The regulation provides districts/BOCES with several options for this component. For teacher evaluations, the regulation provides the following options: approved third-party assessments; district-, regional- or BOCES-developed assessments; a school-wide, group or team metric based on such assessments; student achievement on State assessments Regents examinations and/or Department approved alternative examinations; and a structured district-wide student growth goal-setting process to be used with any State assessment, an approved student assessment, or other school or teacher-created assessment. If districts/BOCES select the State assessment option or use of the group or team metric, the Department estimates that there are no additional costs. If the district/BOCES uses the goal-setting process, the costs are the same as those described above for a goal-setting process. If the district/BOCES already uses a student assessment from the State's approved list, which the Department expects will be the case in many instances, there will be no additional costs imposed by the proposed amendment. If a district/BOCES does not already use an approved local assessment and does not opt to use a measure based on a State assessment, the Department estimates the cost of purchasing a third-party student assessment will cost approximately \$10-\$20 per student, depending on the particular assessment selected. If a district/BOCES selects a school or teacher-created assessment, it will need to implement a growth goal setting process at a similar cost to the

one described above. The estimated costs for a teacher-created assessment itself are negligible and capable of being absorbed using existing staff and resources.

For principals, the regulation provides many options for the locally selected measures subcomponent, which include, but are not limited to, student achievement on State assessments for certain subgroups, student performance on district-wide locally selected measures approved for use in teacher evaluations, graduation and drop out rates for high school grades, progress toward graduation, etc. As described above, if the district/BOCES selects a locally selected measure based on State assessments, Regents examinations, graduation rates, the percent of students who earn a Regents diploma, Department approved alternative examination or progress toward graduation rates, the Department expects these costs to be negligible and to be absorbed by existing staff. If the district/BOCES selects student performance on any or all of the district-wide locally selected measures for teachers, the Department expects that there will be no additional cost for principals that wasn't already incurred for teachers.

Other Measures

For the remaining 60% of the evaluation, the proposed amendment requires that 40 of the 60 points be based on multiple classroom observations for teachers and at least 40 of the 60 points be based on a broad assessment of the principal's leadership and management actions by the building principal's supervisor or a trained independent evaluator. The proposed amendment requires at least 2 observations for teachers and at least 1 principal assessment. For a teacher observation, the Department estimates the following costs:

Teacher Observations: While the regulation does not specifically prescribe how a district must conduct its observations. Based on a model currently in use, the Department expects a teacher will spend approximately 2 hours per classroom observation for pre- and post-conference meetings with the principal/evaluator, which would equate to 4 hours per year. Based on the same model, the Department expects that a principal/evaluator would spend approximately 1 hour for a teacher classroom observation and 2 additional hours for pre-conference and post-conference meetings associated with the conference, which would equate to 3 hours per observation or 6 hours per teacher per year. Therefore, for each teacher, a school district or BOCES would spend approximately \$617.24 per year on classroom observations, under the proposed rule. The Department believes that many districts currently conduct classroom observations and some districts conduct more than 2 observations per year, so for many districts there will be no additional costs imposed by the regulation.

Principal Assessment: The Department expects that a principal will spend approximately 4 hours preparing for a school visit by a superintendent and that a superintendent will spend approximately 2 school days assessing and observing a principal's practice. Therefore, the cost for a district to assess a principal's performance under the requirements of the proposed amendment are estimated to be \$287.60 for the principal and \$1,371.36 for the superintendent.

The proposed amendment also requires that the 60 points be based on a teacher or principal practice rubric approved by the Department or a rubric approved through a variance process. The Department estimates that more than one rubric on the State's approved list will be available to districts/BOCES at no cost. While some rubrics may offer training for a fee and others may require proprietary training, any costs incurred for training are costs imposed by the statute. Many rubric providers do not require a school district/BOCES to receive training through the provider and some providers even provide free online training. The Department estimates that districts/BOCES can obtain a principal practice in the following range: \$0-\$360 per principal evaluated. Some principal practice rubrics may charge an additional fee for training on the rubric, although most rubric providers do not require a user to receive training through the rubric provider.

Reporting and Data Collection

The proposed amendment requires that school districts or BOCES report information to the Department on enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data. The majority of this data is required to be reported under the America COMPETES Act (20 U.S.C. 9871). Therefore, no additional costs are imposed by the proposed amendment. To the extent that such information is not required to be reported under federal law, the Department expects that most districts/BOCES already compile this information and, therefore, these reporting requirements are minimal and should be absorbed by existing district or BOCES resources.

The proposed amendment also requires that every teacher and principal be required to verify the subjects and/or student rosters assigned to them. The Department estimates that it will take a teacher 4 hours to review his/her student roster. This will cost a district or BOCES \$185.84 per teacher. For principals, the Department estimates that it will take a principal 8 hours to review his/her student roster. This will cost a district/BOCES \$575.20 per principal.

As for the additional reporting requirements contained in section 30-2.3 of the Rules of the Board of Regents, school districts or BOCES are required to report many of these requirements under the existing APPR regulations (section 100.2[o])- i.e., explanation of evaluation system used and description of timely and constructive feedback) and the Department expects that most districts or BOCES would put their evaluation process, including appeal procedures in writing and, therefore, reporting of such information would not impose any additional costs on a school district or BOCES.

Vested Interest

The proposed amendment also requires that districts certify that teachers and principals do not have a vested interest in the test results of students whose assessments they score. The Department believes that most districts already have this security mechanism in place. However, in the event a district currently allows a teacher to score their own assessment, the Department expects that districts/BOCES can assign other teachers or faculty to score such assessments. Therefore, the Department believes that any costs imposed by this requirement in the regulation are minimal, if any.

Scoring

The statute requires that a teacher receive a teacher or principal composite effectiveness score based on their score on three subcomponents (student growth on State assessments or other comparable measures; locally selected measures of student achievement and other measures of teacher and principal effectiveness). The proposed amendment sets forth the scoring ranges for the rating categories in two of these subcomponents and overall rating categories. The proposed amendment does not impose any additional costs beyond those imposed by statute.

Training

The statute requires that all evaluators be properly trained before conducting an evaluation. The proposed amendment requires that a lead evaluator be certified by the district/BOCES before conducting and/or completing a teacher's or principal's evaluation and that evaluators be properly trained. Since the training is required by statute, the only additional cost imposed are associated with the district or BOCES' certification and recertification of lead evaluators, which costs are expected to be negligible and capable of absorption using existing staff and resources.

Teacher and Principal Improvement Plans and Appeal Procedures

The statute also requires school districts/BOCES to develop teacher and principal improvement plans for teachers rated ineffective or developing and to develop an appeals procedure through which a teacher or principal may challenge their APPR. The proposed amendment reiterates these statutory requirements and does not impose any additional costs on districts/BOCES relating to the development of TIP/PIP's or an appeal procedure, beyond those imposed by statute.

c. Costs to private regulated parties: None. The rule applies to annual professional performance reviews of teachers and building principals that are conducted by school districts/BOCES and does not impose any costs on private parties.

d. Cost to regulatory agency for implementing and continued administration of the rule: See above cost to State government.

5. LOCAL GOVERNMENT MANDATES:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model)
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model)
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive

teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

If a teacher or principal is rated “developing” or “ineffective,” the law requires the school district/BOCES to develop and implement a teacher or principal improvement plan (TIP or PIP). Tenured teachers and principals with a pattern of ineffective teaching or performance - defined by law as two consecutive annual ineffective” ratings - may be charged with incompetence and considered for termination through an expedited hearing process.

The statute also requires all evaluators to be appropriately trained consistent with standards prescribed by the Commissioner and that appeals procedures be locally developed in each school district/BOCES.

6. PAPERWORK:

In addition to the paperwork requirements described in Section 5 of this document, the proposed amendment contains the following paperwork requirements.

Section 100.2(o) of the Commissioner’s regulations requires that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for all of its classroom teachers and building principals. To the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1 of each year as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations. Such plan shall be filed in the district or BOCES office, as applicable, and made available to the public on its web-site no later than September 10th of each school year, or within ten days after its adoption, whichever shall later occur.

This section requires that the APPR plan describe the school district’s or BOCES’ process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires any school district or BOCES that uses a district, regional or BOCES-developed assessment; a school-wide, group or team metric or a structured district-wide student growth goal setting process to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner’s notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated “developing” or “ineffective,” the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

7. DUPLICATION:

The rule is necessary to implement Education Law section 3012-c and does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness (“Task Force”), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force’s recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department’s recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor’s Office, NYSUT, SAANYS and teachers and administrators across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

9. FEDERAL STANDARDS:

The rule is necessary to implement Education Law section 3012-c. There are no applicable Federal standards concerning the APPR for classroom teachers and building principals as established in Education Law section 3012-c.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No further time is needed to comply. By 9/01/11, each school district shall adopt a plan for the APPR of its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed, and by 9/01/12, each school district and BOCES shall adopt a plan, which may be an annual or multi-year plan, for the APPR of all classroom teachers and building principals.

Summary of Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to all school districts and boards of cooperative educational services (“BOCES”) in the State.

2. COMPLIANCE REQUIREMENTS:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of “highly effective,” “effective,” “developing,” or “ineffective.” The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 40 of the 60 points be based on multiple classroom observations, including at least one observation by a principal or other trained administrator and, for principals, at least 40 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor or a trained independent evaluator, including one or more school visits by a supervisor.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

The proposed amendment also prescribes the following requirements:

The amendments to section 100.2(o) of the Commissioner’s regulations require that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for all of its classroom teachers and building principals. To the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1 of each year as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations. Such plan shall be filed in the district or BOCES office, as applicable, and made available to the public on its web-site no later than September 10th of each school year, or within ten days after its adoption, whichever shall later occur.

This section also requires that the APPR plan describe the school district’s or BOCES’ process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that uses a district, regional or BOCES-developed assessment; a school-wide, group or team metric or a structured district-wide student growth goal setting process to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner’s notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated “developing” or “ineffective,” the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

3. COMPLIANCE COSTS:

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule.

4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed above under Compliance Costs.

5. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c. The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES.

Regarding how student growth should be measured in non-tested subjects, the rule strikes a balance between prescriptiveness and choice by requiring, for teachers in grades 6-11 core subjects where there is no State assessment used as part of a growth or value-added growth model, use of a State-determined, district-wide growth goal-setting process with standardized student assessments chosen from a State-approved list; and, in other grades/subjects where there is no State assessment used as part of a growth or value-added growth model, requiring use of a State-determined, district-wide growth goal-setting process with an assessment selected by districts from a range of choices (including State-approved commercially available assessments, district or BOCES developed assessments, school-wide, group, or team results based on State assessments, and teacher-created assessments).

The rule also provides flexibility in the allocating the 20 points assigned to locally selected measures. The Department has provided a list of local options for the evaluation of teachers and principals for the 20 points of the teacher or principal composite effectiveness score attributed to this subcomponent (15 points once value-added model is implemented).

Consistent with providing flexibility, the rule does not set scoring ranges for the rating categories within the 60 point other measures subcomponent and the rule provides for a variance process for school districts or BOCES that wish to use an existing rubric or a new innovative rubric.

6. LOCAL GOVERNMENT PARTICIPATION:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness (“Task Force”), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations,

which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

Summary of Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 40 of the 60 points be based on multiple classroom observations, including at least one observation by a principal or other trained administrator and, for principals, at least 40 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor or a trained independent evaluator, including one or more school visits by a supervisor.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

The proposed amendment also prescribes the following requirements:

The amendment to section 100.2(o) of the Commissioner's regulations requires that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for all of its classroom teachers and building principals. To the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1 of each year as a result of pending collective bargaining negotiations, the plan shall

identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations. Such plan shall be filed in the district or BOCES office, as applicable, and made available to the public on its web-site no later than September 10th of each school year, or within ten days after its adoption, whichever shall later occur.

This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that uses a district, regional or BOCES-developed assessment; a school-wide, group or team metric or a structured district-wide student growth goal setting process to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

3. COSTS:

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule, which include costs for school districts and BOCES across the State, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c. The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES. Since the statute applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

Regarding how student growth should be measured in non-tested subjects, the rule strikes a balance between prescriptiveness and choice by requiring, for teachers in grades 6-11 core subjects where there is no State assessment used as part of a growth or value-added growth model, use of a State-determined, district-wide growth goal-setting process with standardized student assessments chosen from a State-approved list; and, in other grades/subjects where there is no State assessment used as part of a growth

or value-added growth model, requiring use of a State-determined, district-wide growth goal-setting process with an assessment selected by districts from a range of choices (including State-approved commercially available assessments, district or BOCES developed assessments, school-wide, group, or team results based on State assessments, and teacher-created assessments).

The rule also provides flexibility in the allocating the 20 points assigned to locally selected measures. The Department has provided a list of local options for the evaluation of teachers and principals for the 20 points of the teacher or principal composite effectiveness score attributed to this subcomponent (15 points once value-added model is implemented).

Consistent with providing flexibility, the rule does not set scoring ranges for the rating categories within the 60 point other measures subcomponent and the rule provides for a variance process for school districts or BOCES that wish to use an existing rubric or a new innovative rubric.

5. RURAL AREA PARTICIPATION:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

Job Impact Statement

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Clinically Rich Principal Preparation Program

I.D. No. EDU-09-11-00003-A

Filing No. 462

Filing Date: 2011-05-24

Effective Date: 2011-06-08

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

Action taken: Amendment of section 52.21(c)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 305(1), (2), 3001(2) and 3007(2)

Subject: Clinically rich principal preparation program.

Purpose: Amend the clinical experience component to allow program providers to offer less than a year of mentored clinical experience.

Text or summary was published in the March 2, 2011 issue of the Register, I.D. No. EDU-09-11-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Museum Collections Management Policies

I.D. No. EDU-09-11-00006-A

Filing No. 460

Filing Date: 2011-05-24

Effective Date: 2011-06-08

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

Action taken: Amendment of section 3.27 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 216 (not subdivided) and 217 (not subdivided)

Subject: Museum collections management policies.

Purpose: To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

Text or summary was published in the March 2, 2011 issue of the Register, I.D. No. EDU-09-11-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on March 2, 2011, the State Education Department received the following comments:

1. COMMENT:

Two comments were received in support of the proposed amendment, noting the rule was consistent with the standards of the museum field, including the practices recommended by the American Association of Museums and the American Association for State and Local History, and that the ad hoc deaccessioning committee, appointed by the Board of Regents to develop the proposed rule, has done a very good job of balancing collection stewardship with fiscal reality.

DEPARTMENT RESPONSE:

No response is necessary as the comments are supportive in nature.

2. COMMENT:

One comment was supportive of the proposed amendment, but also requested that future consideration be given to how the provision in section 3.27(c)(6)(vi), requiring institutions to ensure that collections shall not be capitalized, relates to Financial Accounting Standards Board (FASB) guideline 116, which indicates that if museums are to refrain from capitalizing their collections, proceeds may be used only for acquisitions and not for direct care, conservation or other similar activities. In order to use deaccession proceeds for anything other than acquisition, the collections must be capitalized. Only museums that comply with FASB 116 are given accreditation status by the American Association of Museums.

DEPARTMENT RESPONSE:

Accreditation by the American Association of Museums (AAM) is optional and not required by New York law or regulation. AAM is a private not-for-profit corporation that asserts its museum accreditation holds institutions to a higher standard of performance and operation. Therefore, New York museums seeking to acquire or retain such accreditation must weigh the value of using proceeds from deaccessioning for the sole purpose of acquisition against the value of using proceeds for the conservation and direct care of collections, in addition to acquisitions.

3. COMMENT:

(i) No provision is made for relevant good governance issues, such as who in the museum or historical society has authority to authorize or approve deaccession.

(ii) No provision is made for any advance notice to museum or

historical society members or to the public of the proposed deaccessioning of, at the least, historically significant or particularly valuable items.

(iii) No provision is made for notice to donors or their representatives of proposed deaccessions, except for restricted gifts.

(iv) No provision is made for how the deaccession is to be effected, for example notice to other institutions that may have an interest in the items, auction, private sale whether or not after competitive bids.

(v) Section 3.27(c)(7)(x), which permits deaccessioning where the item has been lost or stolen, does not deal with due diligence search efforts, for example filing police reports, filing reports of the loss or theft with Art Loss Register and similar organizations.

DEPARTMENT RESPONSE:

The comments are beyond the scope of this proposed rule making. The proposed rule is intended to establish general criteria for deaccessioning and not to address the specific procedures that must be followed in every instance.

The rule was developed based on the recommendations of the Regents Ad Hoc Advisory Committee on Deaccessioning, which included representatives from across the museum community. The charge of the Ad Hoc Advisory Committee was to develop general criteria for museum deaccessioning that all sectors of the museum community could agree upon. The Ad Hoc Advisory Committee discussed how prescriptive the proposed rule should be and concluded that the rule should set a general standard applicable to all museums and that specific decisions should be left to local museums, so that differences between the various types of museums operating across the State can be accommodated and decisions can be made by local museum professionals, who are in the best position to make such decisions. There was also concern that an overly prescriptive regulation would impose unnecessary burdens and costs on institutions that are already facing challenges in the current economic climate.

It was recognized that not all issues could be addressed in the proposed rule and consideration is being given to establishing a more permanent advisory group to consider museum issues, including refinements of the deaccessioning regulation, and to ensure that all sectors of the museum community have input into the development of regulations addressing such issues. Issues relating to good governance and the authority to approve deaccessioning are largely driven by statute and would require a broader policy discussion by such an advisory group. Proposals such as requiring notice of each deaccessioning to members and the public, prescribing notice to donors, prescribing due diligence standards for searches of lost collection items and requiring notice of each deaccessioning to other institutions would impose burdens on museums and their impact needs to be fully assessed. A careful balance needs to be struck between protecting the public interest in preserving and protecting collections and imposing paperwork and other burdens on museums that could affect their ability to function. Accordingly, the issues raised in the above comments may be referred to a successor advisory group for further consideration.

4. COMMENT:

No provision is made for the deaccession of collection items that were given for the purpose of being sold, sooner or later, for the benefit of the donee. Shouldn't the proceeds from such sales be available for general purposes, unless restricted by the donors?

DEPARTMENT RESPONSE:

The Department maintains that items donated to a museum specifically to be sold for the purpose of raising funds for general purposes are donor-restricted gifts, and should not be accessioned into the collection. The proceeds from such sales may be used for general purposes unless restricted by the donor. Clarification of any such issues would be more appropriately addressed in guidance.

5. COMMENT:

No provision is made for earnings on the restricted fund referred to in section 3.27(c)(6)(vii) or for its earnings to be dedicated to the restricted purpose. Nor does the rule provide for filing of any insurance claims or the deposit of any insurance proceeds in the separate fund.

DEPARTMENT RESPONSE:

The comments are beyond the scope of this rulemaking since the proposed rule does not address any aspect of the management of the separate fund in section 3.27(c)(6)(vii). The Department believes that these issues are appropriate for guidance, at least in the first instance, and that if a regulatory mandate is needed, it should be developed through a representative museum advisory group. Consideration is being given to establishing a permanent museum advisory group and these issues may be referred to such advisory group for further consideration.

6. COMMENT:

The distinction in section 3.27(e) between items or lots deaccessioned and disposed of is unclear.

DEPARTMENT RESPONSE:

The distinction between items and lots of items came from representatives of natural history museums, who accession similar specimens in lots (such as butterflies of a certain species), and who sought clarification that they can list in their annual report the lots deaccessioned rather than individually list the potentially hundreds of items included in the lots. Individual listing would be extremely costly and burdensome to such museums and is not necessary to carry out the purpose in requiring transparency in deaccessioning.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Emergency Closing of Carnivorous Marine Gastropod Harvesting Areas

I.D. No. ENV-23-11-00005-EP

Filing No. 454

Filing Date: 2011-05-20

Effective Date: 2011-05-20

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

Proposed Action: Addition of Part 50 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301(1)(t), 11-0325 and 13-0330

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: Bivalve shellfish (clams, mussels, oysters and scallops) are filter feeders that ingest phytoplankton from the water column. In areas where there are harmful algal blooms, they ingest toxin-producing algae that are present and may accumulate the algal toxins in their body tissues. These shellfish are likely to be unsafe for human consumption. Consequently, to protect public health, shellfish harvesting is prohibited in areas where biotoxins are detected at elevated levels in shellfish meats.

Bivalve shellfish are also the main food item of whelks, conchs and other predatory gastropods. Once these shellfish have bioaccumulated biotoxins from algal blooms, whelks which feed on the shellfish will also ingest and accumulate the biotoxins. Like shellfish, these gastropods will likely be unsafe for human consumption. DEC is proposing regulations to facilitate the prohibition of the harvest of gastropods in conjunction with shellfish closures in areas where elevated biotoxins are detected. The harvest prohibition is for the protection of public health, to protect consumers from the dangers of ingesting gastropods which may have elevated levels of biotoxins.

Paralytic shellfish poisoning, diarrhetic shellfish poisoning and other maladies have been associated with harmful algae blooms. The New England States and the Canadian Maritimes currently have the ability to close carnivorous snail fisheries in the event of harmful algae blooms.

Pursuant to the May 20, 2011 certification from the Commissioner of Health, DEC is taking all necessary measures, including this rule making, to protect human health.

Subject: Emergency closing of carnivorous marine gastropod harvesting areas.

Purpose: To establish Commissioner's authority to prohibit the harvest of carnivorous gastropods in areas affected by marine biotoxins.

Text of emergency/proposed rule: New 6 NYCRR Part 50 is adopted to read as follows:

50 Miscellaneous marine species

50.1 Carnivorous marine gastropods hazardous for human consumption

When the commissioner, or the commissioner's designee authorized to designate shellfish lands as uncertified, determines that carnivorous gastropods may be hazardous for use as food for human consumption, due to the presence of marine biotoxins, he shall take such action as he deems necessary to protect the public health and welfare. The commissioner, or the commissioner's designee authorized to designate shellfish lands as uncertified, may prohibit activities such as, but not limited to, the taking, possessing, processing, packing, transporting, offering or exposing for sale carnivorous gastropods from areas that are designated as uncertified for the harvest of shellfish pursuant to 6 NYCRR Part 47.4 due to the presence of marine biotoxins in shellfish. The commissioner may advise the general public, the industry and public health officials that carnivorous gastropods may be hazardous for use as food.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 17, 2011.

Text of rule and any required statements and analyses may be obtained from: Kim McKown, Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, East Setauket, NY 11733, (631) 444-0454, email: kamckown@gw.dec.state.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) 3-0301(1)(t) gives the Commissioner of the Department of Environmental Conservation (DEC, or the department) the authority to monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems and to warn of emergency conditions. ECL 11-0325 provides that when DEC and Department of Health jointly determine that a disease, which endangers the health and welfare of fish or wildlife populations, or of domestic livestock or of the human population, exists in any area of the state, or is in imminent danger of being introduced into the state, the department shall adopt any measures or regulations with respect to the taking, transportation, sale, offering for sale or possession of native fish or feral animals it may deem necessary in the public interest to prevent the introduction or spread of such disease. ECL 13-0330 gives DEC broad regulatory authority for whelk (*Busycon* spp.), including size limits, catch and possession limits, open and closed seasons, closed areas, and recordkeeping requirements. These regulations must be no less restrictive than requirements set forth in the law.

2. Legislative objectives:

The objective of ECL 3-0301(1)(t) is to give the commissioner the authority to protect the public as ecological system change. The objective of ECL 11-0325 is to give the commissioner the ability to protect resources and human health when there is an imminent danger of disease. The objective of ECL 13-0330 is to give the Department the authority to manage the whelk resource for the benefit of the public.

3. Needs and benefits:

Bivalve shellfish are filter feeders that ingest the phytoplankton from the water column. In areas where there are harmful algal blooms, they ingest the algal cells present and may accumulate the algal toxins in their body meats. These shellfish are likely to be unsafe for human consumption. Consequently, shellfish harvest is prohibited in areas where biotoxins are detected in elevated levels in shellfish meats.

Bivalve shellfish are also the main food item of whelks, conchs and other predatory gastropods. Once these shellfish have bioaccumulated biotoxins from algal blooms, predatory gastropods which feed on the shellfish will also ingest and accumulate the biotoxins. Like shellfish, these gastropods will likely be unsafe for human consumption. DEC is proposing regulations to facilitate the prohibition of the harvest of gastropods in conjunction with shellfish closures in areas where elevated biotoxins are detected. The harvest prohibition is for the protection of public health, to prevent consumers from the dangers of ingesting gastropods which may have elevated levels of biotoxins.

Paralytic shellfish poisoning, diarrhetic shellfish poisoning and other maladies have been associated with harmful algae blooms. The New England States and the Canadian Maritimes currently have the ability to close carnivorous snail fisheries in the event of harmful algae blooms.

4. Costs:

The department may incur small costs associated with the notification of the regulated public. Law enforcement costs should not increase because the affected areas are already uncertified for the harvest of shellfish and are subject to patrol because of National Shellfish Sanitation Program requirements. There will be no new costs to local governments.

Whelk permit holders may incur costs due to temporary harvest closures due to biotoxin contamination if they are unable to move their harvesting to open areas. During 2010 there were 260 resident and 12 non-resident whelk permit holders in New York. Currently there are no regulations requiring landings reporting by New York whelk permit holders, but landings information from less than 10 percent of the permit holders reported harvesting more than 80,000 pounds of whelk during 2009. We have no information on the actual number of permit holders who actively harvest whelk and if active harvesters can easily move their harvesting operations to alternative open areas.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

No action alternative: Failure to adopt this rule will allow the harvest, sale and consumption of marine gastropods that may be unsafe for human consumption.

9. Federal standards:

Whelks are an inshore species, but are not considered migratory. Therefore they are not managed by the Atlantic States Marine Fishery Commission or the Regional Fisheries Management Councils.

10. Compliance schedule:

Regulated parties will be notified through appropriate news releases and via DEC's website of the changes to the regulations. The emergency regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

Whelk permit holders who fish in areas that area temporarily closed due to biotoxins will be impacted by this rule. During 2010 there were 256 resident and 12 non-resident whelk permit holders in New York. The Department of Environmental Conservation (DEC, or the department) does not have any information on the number of permit holders who actively harvest whelk and if active harvesters can easily move their harvesting operations to alternative open areas. New York shippers and dealers may also be impacted by this rule if the landings and sales of whelk decrease due to temporary area closures. During 2010 there were 423 Food Fish and Crustacea Shipper and Dealers licenses, 23 Shellfish Processors licenses, 104 Shellfish Reshippers licenses and 174 Shellfish Shipper licenses.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

None.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The changes required by the proposed regulations may reduce the income of whelk permit holder and shippers and dealers if whelk landings and sales decrease due to the temporary area closures.

There is no additional technology required for small businesses, and this action does not apply to local governments; there are no economic or technological impacts for either.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to protect public health. The department has consulted with whelk permit holders and the Shellfish Advisory Committee on whelk regulations, including the authority to close areas due to biotoxins. There was no consensus but some were in favor of the proposed regulation to protect the consumers' confidence in the product.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The commercial whelk fisheries that are directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the

proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for the Department of Environmental Conservation (DEC, the department) to protect public health from potential exposure to whelk contaminated with biotoxins. The proposed rule will temporarily close areas to whelk harvest when the department has closed the area due to shellfish due to biotoxins. Some whelk permit holders, as well as shippers and dealers, may be affected by these regulations if areas are closed and whelk permit holders cannot divert harvest effort to alternative open areas.

2. Categories and numbers affected:

Whelk permit holders who harvest in areas that are temporarily closed due to the detection of marine biotoxins will be impacted by this rule. During 2010 there were 256 resident and 12 non-resident whelk permit holders in New York. DEC does not have any information on the number of permit holders who actively harvest whelk and if active harvesters can easily divert their harvesting operations to alternative open areas. New York shippers and dealers may also be impacted by this rule if the landings and sales of whelk decrease due to these temporary area closures. During 2010 there were 423 Food Fish and Crustacea Shipper and Dealers licenses, 23 Shellfish Processors licenses, 104 Shellfish Reshippers licenses and 174 Shellfish Shipper licenses.

3. Regions of adverse impact:

The regions most likely to receive any adverse impact are within the marine and coastal district of the State of New York. This area included all the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including Long Island Sound and the Hudson River up to the Tappan Zee Bridge.

4. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to protect public health. The department has consulted with whelk permit holders and the Shellfish Advisory Committee on whelk regulations, including the authority to close areas due to biotoxins. There was no consensus but some were in favor of the proposed regulation to protect the consumers' confidence in the product.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, and March 21, 2011. The Department is currently working with the Governor's Office to make additional revisions to the regulation.

In the interim, this version of Regulation No. 85 needs to remain effective for the general welfare.

Subject: Standards for the management of the New York State Retirement Systems.

Purpose: To ban the use of placement agents by investment advisors engaged by the state employees retirement system.

Text of emergency rule: Section 136-2.2 is amended to read as follows:

§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)](a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] Fund

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)](b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.

[(f) (e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] Fund. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(g) OSC shall mean the Office of the State Comptroller.

[(g)] (h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

[(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administra-

Insurance Department

EMERGENCY RULE MAKING

Standards for the Management of the New York State Retirement Systems

I.D. No. INS-23-11-00001-E

Filing No. 452

Filing Date: 2011-05-19

Effective Date: 2011-05-19

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

Action taken: Amendment of Part 136 (Regulation No. 85) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 314, 7401(a) and 7402(n)

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

Specific reasons underlying the finding of necessity: The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards of behavior with regard to investment of the Common Retirement Fund's assets, conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

tive services do not include services provided to the fund relating to fund investments.]

(i) *Retirement System* shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

(j) *Third party administrator* shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.

[(j)] (k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k)] Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4 (d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] *the Fund shall not* [engages, hires, invests with, or commits] *engage, hire, invest with or commit to*[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] Fund. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5 (g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] *Retirement System's* financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] Fund to investment managers, consultants or advisors, and third party administrators;

[(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the [fund's] *Fund's* investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the [fund] Fund every three years by a qualified unaffiliated person.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 16, 2011.

Text of rule and any required statements and analyses may be obtained from: David Neustadt, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5265, email: dneustad@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201, 301, 314, 7401(a), and 7402(n) of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, and to prescribe regulations interpreting the Insurance Law.

Section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with sections 310, 311 and 312 of the Insurance Law. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as a statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Section 314 of the Insurance Law authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This amendment, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. Needs and benefits: The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund ("the Fund"), conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the amendment defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this amendment. There are no costs to the Insurance Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

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

6. Paperwork: No additional paperwork should result from the prohibition imposed by the amendment.

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

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. These

entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund ("The Fund"). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women- and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority ("FINRA");
- A requirement that any placement agent seeking to do business in New York register with the Insurance Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association ("SIFMA"), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Department does not have jurisdiction over placement agents, which makes it difficult to implement and enforce requirements on them. The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

9. Federal standards: The Securities and Exchange Commission issued a "Pay-To-Play" regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as an amended regulation can be made permanent.

Regulatory Flexibility Analysis

1. Effect of the rule: This amendment strengthens standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund").

The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund ("the Fund"), conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the amendment defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the amendment. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act.

This amendment will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The proposal will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the amendment is also directed to placement agents, who as a result of this proposal, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The amendment bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries and to safeguard the integrity of the Fund's investments.

This amendment will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this amendment is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this amendment. There are no costs to the Insurance Department or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of

New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(13) will be affected by this proposal. The amendment bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This amendment will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The amendment does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Job Impact Statement

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. The amendment bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The amendment may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

Assessment of Public Comments

Comments that were received as a result of the Public Hearing held on April 28, 2010:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund ("The Fund"). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women- and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority ("FINRA");
- A requirement that any placement agent seeking to do business in New York register with the Insurance Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association ("SIFMA"), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers

acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Department does not have jurisdiction over placement agents, which makes it difficult to implement and enforce requirements on them. The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

The Department met with representatives from SIFMA on June 28th to gain further understanding of some of the issues raised in opposition to the proposed rule. We subsequently requested additional information from SIFMA. SIFMA provided the Department with additional information based upon actions taken and/or contemplated by pension fund regulators in other States. The Department will continue to assess the comments that have been received and any other information that may be submitted.

The Department is also evaluating the extent to which its proposed rule conforms with the Securities and Exchange Commission's "Pay-To-Play" regulation for financial advisors that was issued on July 1, 2010. This regulation is effective on September 13, 2010, with full compliance by March 14, 2011 for all affected investment advisers.

We are continuing to research best practices in use with large U.S. public pension funds before any further action will be taken with regards to the proposed rule. A number of policies/practices being researched include limits on the amount of business that may be placed through any single placement agent, and the feasibility of monetary penalties for investment managers/advisors who seek to circumvent procedures that are established to mitigate the risk of undue influence by politically connected persons.

Office of Mental Health

EMERGENCY RULE MAKING

Implementation of Medicaid Fee Reductions in Various OMH-Licensed Programs

I.D. No. OMH-23-11-00007-E

Filing No. 457

Filing Date: 2011-05-23

Effective Date: 2011-05-23

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

Action taken: Amendment of Parts 512, 588 and 591 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 43.01 and 43.02

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

Specific reasons underlying the finding of necessity: The rulemaking serves to implement Medicaid fee reductions for various programs licensed by the Office of Mental Health (Personalized Recovery Oriented Services, Day Treatment, Partial Hospitalization, Intensive Psychiatric Rehabilitation Treatment, and Comprehensive Psychiatric Emergency Programs). The reduction in rates for these non-State operated programs is part of a continuation of the 1.1% reduction in State Medicaid expenditures for mental health programs, and is consistent with the 2011-2012 enacted State budget. As the rate reductions are effective as of April 1, 2011, the rule has been deemed to warrant emergency filing.

Subject: Implementation of Medicaid fee reductions in various OMH-licensed programs.

Purpose: To reduce rates for various non-State-operated programs consistent with the 2011-2012 enacted State budget.

Text of emergency rule: 1. Subdivision (e) of Section 512.12 of Title 14 NYCRR is amended to read as follows:

(e) Effective April 1, [2008] 2011, the monthly base rate and component add-on schedules for PROS programs are as follows:

(1) Comprehensive PROS Programs:
(i) for programs operated in the Downstate Region:

Pre-Adm	Monthly Base Rate*					Component Add-On		
	Level 1 2-12 Units	Level 2 13-27 Units	Level 3 28-43 Units	Level 4 44-60 Units	Level 5 61+ Units	IR	ORS	CT
\$[155] 153	\$[206] 204	\$[447] 442	\$[687] 680	\$[894] 884	\$[1,086] 1,074	\$[419] 414	\$[359] 355	\$[244.51] 242

* The Monthly Base Rate is determined by the total PROS units associated with a single PROS participant and his or her collateral(s) in a given month.

(ii) for programs operated in the Upstate Region:

Pre-Adm	Monthly Base Rate*					Component Add-On		
	Level 1 2-12 Units	Level 2 13-27 Units	Level 3 28-43 Units	Level 4 44-60 Units	Level 5 61+ Units	IR	ORS	CT
\$[141] 140	\$[188] 186	\$[407] 402	\$[625] 619	\$[812] 803	\$[988] 977	\$[381] 377	\$[327] 324	\$[244.51] 242

* The Monthly Base Rate is determined by the total PROS units associated with a single PROS participant and his or her collateral(s) in a given month.

(2) Limited license PROS programs:

(i) for programs operated in the Downstate Region:

Reimbursement Category	Monthly Fee
Intensive Rehabilitation	\$[479] 474
Ongoing Rehabilitation and Support	\$[395] 391

(ii) for programs operated in the Upstate Region:

Reimbursement Category	Monthly Fee
Intensive Rehabilitation	\$[436] 431
Ongoing Rehabilitation and Support	\$[359] 355

2. Subdivisions (c), (e) and (f) of Section 588.13 of Title 14 NYCRR are amended to read as follows:

(c) [Reimbursement] *Effective April 1, 2011, reimbursement* under the medical assistance program for day treatment programs serving children licensed solely pursuant to article 31 of the Mental Hygiene Law, and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs operated in Bronx, Kings, New York, Queens and Richmond Counties:

Full day	at least 5 hours	\$[79.48] 78.61
Half day	at least 3 hours	[39.75] 39.31
Brief day	at least 1 hour	[26.50] 26.21
Collateral	at least 30 minutes	[26.50] 26.21
Home	at least 30 minutes	[79.48] 78.61
Crisis	at least 30 minutes	[79.48] 78.61
Preadmission - full day	at least 5 hours	[79.48] 78.61
Preadmission - half day	at least 3 hours	[39.75] 39.31

(2) For programs operated in other than Bronx, Kings, New York, Queens and Richmond Counties:

Full day	at least 5 hours	\$[76.84] 75.99
Half day	at least 3 hours	[38.41] 37.99
Brief day	at least 1 hour	[25.57] 25.29
Collateral	at least 30 minutes	[25.57] 25.29
Home	at least 30 minutes	[76.84] 75.99
Crisis	at least 30 minutes	[76.84] 75.99
Preadmission - full day	at least 5 hours	[76.84] 75.99
Preadmission - half day	at least 3 hours	[38.41] 37.99

(e) [Reimbursement] *Effective April 1, 2011, reimbursement* under the medical assistance program for regular, collateral, and crisis visits to all

non-State operated partial hospitalization programs licensed pursuant to article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs located in Nassau and Suffolk counties, the fee shall be \$[23.39] 23.13 for each service hour.

(2) For programs located in New York City, the fee shall be \$[30.71] 30.37 for each service hour.

(3) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be \$[25.81] 25.53 for each service hour.

(4) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be \$[17.70] 17.51 for each service hour.

(5) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be \$[21.94] 21.70 for each service hour.

(f) [Reimbursement] *Effective April 1, 2011, reimbursement* under the medical assistance program for on-site and off-site visits for all non-State operated intensive psychiatric rehabilitation treatment programs licensed pursuant to article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at \$[25.20] 24.92 for each service hour.

3. Section 591.5 of 14 NYCRR Part 591 is amended to read as follows:
[Reimbursement] *Effective April 1, 2011, reimbursement* for comprehensive psychiatric emergency programs under the medical assistance program shall be in accordance with the following fee schedule:

Brief emergency visit	\$[84.64] 83.71
Full emergency visit	[497.06] 491.59
Crisis outreach service visit	[497.06] 491.59
Interim crisis service visit	[497.06] 491.59

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 20, 2011.

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

1. Statutory authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.01 of the Mental Hygiene Law gives the Commissioner of Mental Health the authority to set rates for outpatient services at facilities operated by the Office of Mental Health.

Section 43.02 of the Mental Hygiene Law provides that payments under the Medical Assistance Programs for services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of Budget.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. The amendments to 14 NYCRR Part 512, Part 588 and Part 591 are made in accordance with the 2011-2012 enacted State Budget (Chapter 59 of the Laws of 2011).

3. Needs and benefits: The amendments to Part 512, Part 588 and Part 591 are necessary to implement Medicaid fee reductions for Office of Mental Health-licensed programs including: Personalized Recovery Oriented Services (PROS) Programs, Day Treatment Programs, Partial Hospitalization Programs, Intensive Psychiatric Rehabilitation Treatment Programs, and Comprehensive Psychiatric Emergency Programs. These amendments are required to implement a continuation of the 1.1% reduction to Medicaid, as required by the enacted State budget. These rate decreases have been approved by the Director of the Division of the Budget and are effective as of April 1, 2011.

4. Costs:

a) Costs to state government: These regulatory amendments will not result in any additional costs to State government. It is estimated that the total savings to the State share of Medicaid will be \$421,150.

b) Costs to local government: These regulatory amendments will not result in any additional costs to local government other than in their status as a provider of mental health services. Such costs are addressed under 4(c) "Costs to regulated parties".

c) Costs to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties, but will reduce the rates paid under the Medical Assistance Program for the programs listed above. Currently there are a total of 61 PROS Programs, 31 Day Treatment Programs, 35 Partial Hospitalization Programs, 15 Intensive Psychiatric

Rehabilitation Treatment Programs, and 21 Comprehensive Psychiatric Emergency Programs. The estimated full annual impact of these rate changes is as follows: PROS: \$377,924; Day Treatment: \$196,888; Partial Hospitalization: \$68,004; Intensive Psychiatric Rehabilitation Treatment: \$95,222; and Comprehensive Psychiatric Emergency Programs: \$104,262 - resulting in total Medicaid reduction of \$842,300.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: As noted above, this amendment is consistent with the 2011-2012 enacted State budget. The reduction in rates for these non-State operated programs is part of a continuation of the 1.1% reduction in State Medicaid expenditures for mental health programs, and reflects the serious fiscal condition of the State. The only alternative to the regulatory amendment would be to make further budgetary cuts to other programs which would have the potential to put those providers at financial risk. Therefore, that alternative was not considered.

9. Federal standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: These regulatory amendments are effective immediately. The rate adjustment is considered effective as of April 1, 2011.

Regulatory Flexibility Analysis

The rulemaking serves to implement Medicaid fee reductions for various programs licensed by the Office of Mental Health (Personalized Recovery Oriented Services, Day Treatment, Partial Hospitalization, Intensive Psychiatric Rehabilitation Treatment, and Comprehensive Psychiatric Emergency Programs). The reduction in rates for these non-State operated programs is a continuation of the 1.1% reduction in State Medicaid expenditures for mental health programs. These proposed changes are consistent with the 2011-2012 enacted State budget and reflect the serious fiscal condition of the State. As there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the rulemaking, which serves to implement Medicaid fee reductions for various programs licensed by the Office of Mental Health, will not impose any adverse economic impact on rural areas. The reduction in rates for these non-State operated programs (Personalized Recovery Oriented Services, Day Treatment, Partial Hospitalization, Intensive Psychiatric Rehabilitation Treatment, and Comprehensive Psychiatric Emergency Programs) is part of a continuation of the 1.1% reduction in State Medicaid expenditures for mental health programs. These proposed changes are consistent with the 2011-2012 enacted State budget and reflect the serious fiscal condition of the State.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rulemaking, which serves to implement Medicaid fee reductions for various programs licensed by the Office of Mental Health, will have no impact upon jobs and employment opportunities. The reduction in rates for these non-State operated programs (Personalized Recovery Oriented Services, Day Treatment, Partial Hospitalization, Intensive Psychiatric Rehabilitation Treatment, and Comprehensive Psychiatric Emergency Programs) is part of a continuation of the 1.1% reduction in State Medicaid expenditures for mental health programs. These proposed changes are consistent with the 2011-2012 enacted State budget and reflect the serious fiscal condition of the State.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Clarification of the Rules Regarding Ineligibility of Certain Individuals for a Pre-Conviction Conditional License (PCCL)

I.D. No. MTV-23-11-00019-P

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

Proposed Action: This is a consensus rule making to amend Part 134 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 1196

Subject: Clarification of the rules regarding ineligibility of certain individuals for a pre-conviction conditional license (PCCL).

Purpose: To clarify that a motorist will be ineligible for a PCCL if they have 2 or more prior alcohol-related driving convictions.

Text of proposed rule: Paragraph (11) of subdivision (a) of section 134.7 is amended to read as follows:

(11) (a) The person has three or more alcohol-related convictions or incidents within the last ten years. For the purposes of this paragraph, a conviction for a violation of section 1192 of the Vehicle and Traffic Law, and/or a finding of a violation of section 1192-a of such law and/or a finding of refusal to submit to a chemical test under section 1194 of such law arising out of the same incident shall only be counted as one conviction or incident. The date of the violation or incident resulting in the conviction or a finding as described herein shall be used to determine whether three or more convictions or incidents occurred within a 10 year period.

(b) For the purposes of this paragraph, when determining eligibility for a conditional license issued pending prosecution pursuant to section 134.18 of this Part, the term "incident" shall include the arrest that resulted in the issuance of the suspension pending prosecution.

Text of proposed rule and any required statements and analyses may be obtained from: Monica J Staats, NYS Department of Motor Vehicles, Legal Bureau, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.ny.gov

Data, views or arguments may be submitted to: Dinah Crossway, NYS Department of Motor Vehicles, Legal Bureau, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.ny.gov

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

Consensus Rule Making Determination

The proposed amendment is necessary to clarify the application of a long-standing rule, set forth in Part 134.7(a)(11), regarding ineligibility for a conditional license issued by the Department of Motor Vehicles (DMV) to a motorist who has been twice convicted of an alcohol-related driving offense and whose driver's license has been suspended pending prosecution pursuant to Vehicle and Traffic Law (VTL) section 1193(2)(e)(7).

Vehicle and Traffic Law section 1193(2)(e)(7) requires that a court suspend a motorist's license pending prosecution: (1) where the motorist is charged with certain VTL section 1192 violations and is alleged to have a blood alcohol content of .08 % or higher, and/or (2) where the motorist is charged with certain VTL section 1192 violations and was the holder of a junior driver's license. A motorist whose license has been suspended pending prosecution may be eligible for a conditional license that affords certain limited driving privileges during this pre-conviction suspension period. This type of conditional license is commonly referred to as a pre-conviction conditional license ("PCCL"); DMV may also issue conditional licenses to eligible motorists following conviction for a VTL section 1192 violation. The same eligibility criteria are applied by DMV in determining motorist eligibility for PCCLs and post-conviction conditional licenses (with the exception that enrollment in a driving driver program is not a requirement for PCCL-issuance).

The regulations clearly state that a motorist who has had three or more alcohol-related convictions or incidents within the preceding ten years shall not be eligible for a post conviction conditional license (See § 134.7(a)(11)). The purpose of this amendment is to clarify that and memorialize DMV's current practice which is to deny pre-conviction conditional license issuance to a motorist who, within 10 years of a suspension pending prosecution, has two prior alcohol-related convictions because the arrest giving rise to the suspension pending prosecution is considered an incident under 134.7(a)(11).

Since this proposed rule simply clarifies an existing rule, it is submitted as a consensus rulemaking.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it would not have an adverse impact on job development in New York State.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

List of State Parks, Parkways, State Land, Recreation Facilities and Historic Sites

I.D. No. PKR-05-11-00002-A

Filing No. 458

Filing Date: 2011-05-23

Effective Date: 2011-06-08

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

Action taken: Repeal of Part 384 and addition of new Part 384 to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8) and 13.03

Subject: List of State parks, parkways, state land, recreation facilities and historic sites.

Purpose: To update the list of state parks, parkways, state land, recreation facilities and historic sites.

Substance of final rule: Under the proposed rule at 9 NYCRR Part 384 the Office of Parks, Recreation and Historic Preservation (OPRHP) is updating the list of state parks, historic sites, state land and recreation facilities as required by Section 13.03 of the Parks, Recreation and Historic Preservation Law.

Subpart 384-1 State parks (with or without campgrounds and cabins), parkways, boat launches, trails, recreation facilities and historic sites under OPRHP jurisdiction and located outside the Adirondack and Catskill Parks.

§ 384.1 Niagara Region

§ 384.2 Allegany Region

§ 384.3 Genesee Region

§ 384.4 Finger Lakes Region

§ 384.5 Central New York Region

§ 384.6 Taconic Region

§ 384.7 Palisades Region

§ 384.8 Long Island Region

§ 384.9 Thousand Islands Region

§ 384.10 Saratoga-Capital District Region

§ 384.11 New York City Region

Subpart 384-2 State land, recreation facilities and historic sites under the Department of Environmental Conservation jurisdiction.

§ 384.12 Major Facilities

§ 384.13 Facilities Located in the Adirondacks and Managed by ORDA

§ 384.14 Historic Sites Located in the Adirondacks and Managed by OPRHP

§ 384.15 Campground and Picnic Areas

§ 384.16 Boat Launches at Campgrounds

§ 384.17 Boat Launches and Fishing Access Sites Located Outside of Campgrounds

§ 384.18 Other State Land by Geographic Area

(a) Long Island

(b) New York City

(c) Lower Hudson Valley

(d) Capital District

(e) Eastern Adirondacks/Lake Champlain

(f) Western Adirondacks/Upper Mohawk Valley/Eastern Lake Ontario

(g) Central New York

(h) Rochester/Western Finger Lakes

(i) Western New York

Final rule as compared with last published rule: Nonsubstantive changes were made in Subparts 384-1 and 384-2.

Text of rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, ESP, Agency Bldg. 1, 19th floor, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprhp.state.ny.us

Revised Job Impact Statement

The existing rule proposed by the Office of Parks, Recreation and Historic Preservation at 9 NYCRR Part 384 that lists state parks, historic sites, state land and recreational facilities does not affect jobs or employment opportunities and the repeal and updating of the list would not affect jobs or employment opportunities.

Assessment of Public Comment

In addition to technical comments submitted by regional and Albany staffs in the Office of Parks, Recreation and Historic Preservation (State Parks) and the Department of Environmental Conservation (DEC) that required corrections to the proposed facilities list at 9 NYCRR Part 384, the following public comments, focusing primarily on state parks on Long Island, were received. The responses indicate other corrections that were made to the list:

Comment: It would be helpful to have more information regarding the parks, historic sites, parkways, state land and recreational facilities. The regulation at 9 NYCRR Part 384 merely lists the counties where the sites are located.

Response: Location details, maps or other information about state parks, historic sites, parkways, state land and recreational facilities is found on the websites of the Office of Parks, Recreation and Historic Preservation (State Parks) at www.nysparks.com or the Department of Environmental Conservation (DEC) www.dec.ny.gov. The public is more likely to search these websites than to consult this regulation to obtain information about these facilities. The list meets the statutory requirements at Parks, Recreation and Historic Preservation Law § 13.03.

Comment: Robert Moses Causeway is not listed.

Response: The parkway and bridge are part of the Robert Moses Causeway and that is now listed with the correct title.

Comment: Robert Moses State Park and Belmont Lake State Park do not have boat launches, and the county locations for some boat launches are missing.

Response: Information on boat launches has been corrected and updated; that category in Subpart 384-1 now only includes separate boat launches that are not part of state parks.

Comment: Jones Beach Theatre is a significant recreational facility that should be listed.

Response: Jones Beach Theatre is part of Jones Beach State Park in Nassau County and that State Park is listed in the regulation.

Comment: The Cavett property is not listed or described.

Response: The Cavett property was added to Amsterdam Beach State Park in 2008. That Park, therefore, now includes 198.64 acres of currently undeveloped open space with a few trails. Although open to the public, there is no formal entrance or access point. A process to develop a master plan for the Long Island South Fork Park Complex that encompasses 9 state parks including Amsterdam Beach State Park is scheduled to commence in 2012.

Comment: The Ploch Property in Suffolk County is not described.

Response: The 12-acre Ploch Property was acquired in 2001 and is co-owned with Brookhaven. State Parks, Brookhaven and the Long Island Museum of American Art, History and Carriages in the Village of Stony Brook entered into an Agreement that allows the property to be used for parking at the Museum.

Comment: According to the Rockefeller Institute there are 7 parks on Long Island with cabins for rent that should be identified.

Response: The Rockefeller Institute data includes private, town, village, city and county parks. There are no cabins for rent in state parks on Long Island.

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

Pets at Campsites, Cabins and Cottages in State Parks

I.D. No. PKR-23-11-00002-P

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

Proposed Action: Addition of section 372.7(g)(17) to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(5), (8) and 7.11(2)

Subject: Pets at campsites, cabins and cottages in State Parks.

Purpose: To limit the number of pets at a campsite, cabin or cottage to 2 per reservation in parks where pets are allowed.

Text of proposed rule: A new paragraph 17 is added to subdivision g of Section 372.7 of 9 NYCRR.

Section 372.7. Activities requiring a permit.

The following activities shall require a permit:

(g) Camping. Camping at authorized sites, cabins or other structures.

(17) No more than two pets (dogs, cats or other domesticated animals normally maintained in or near the household of the owner or person who cares for them) shall be present at any campsite, cabin or cottage in a park that allows these animals to be there. Persons at the campsite, cabin or cottage shall directly control and supervise the pets and crate or restrain them on leashes that are not more than 6 feet in length. Proof of licensure for dogs and proof of rabies inoculation for dogs, cats and domesticated ferrets shall be produced if requested by staff. If any provision of this paragraph is violated the pet shall be removed from the park by either the pet owner or the person who cares for the pet or the permit holder. This paragraph does not apply to a person with a disability or his or her companion service animal.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, ESP, Agency Building 1, 19th Floor, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprhp.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority: Parks, Recreation and Historic Preservation Law (PRHPL) § § 3.09(5)(8); 7.11(2).

Legislative Objectives: To update the pet rule at campsites, cabins and cottages.

Needs and Benefits: Presently, eleven separate regional rules address pet attendance at State Parks. In those State Parks where pets are allowed, only two regions limit the number of pets that may be brought to campsites, cabins and cottages. State Parks' experience indicates that limiting the number of pets to 2 helps better manage user conflicts in those parks where pets are allowed.

Those parks that allow an unlimited number of pets, report that user conflicts are escalating. For example, patrons with camping reservations have brought 6-8 dogs per reservation and housed them in kennel crates. When they are walked in the pet loop this often crowds out other animals. A group of dogs barking together often disturbs other campers.

The proposal applies the two-pet rule per camping, cabin or cottage reservation on a statewide basis, thus, making it the Agency standard in those state parks that presently allow pets by regional rule.

In addition, the rule clarifies that only healthy domestic household pets as defined in Agriculture and Markets Law Section 350(5) may visit campgrounds, cabins or cottages. Patrons are not allowed to bring farm animals as defined in Agriculture and Markets Law Section 350(4) or wild animals as defined in Environmental Conservation Law Section 11-0103(6)(e) to campsites, cabins or cottages.

Also the pet owner, custodian or camping permit holder must remove a pet if the rule is violated.

Finally, the rule requires that pets be directly supervised, crated or tethered on a 6 foot lead.

Costs: None.

Local Government Mandates: None.

Paperwork: OPRHP will notify the public about the changes to the pet rule through its publications, including the Camping Manual. Otherwise, no additional reporting forms or other paperwork will be required.

Duplication: The proposed rule applies to campsites, cabins or cottages located in those State Parks that presently allow pets by regional regulation. Under PRHPL § 7.11(2) existing regional pet rules are superseded so there is no duplication. The existing rules are found at 9 NYCRR § § 375.1; 397.6; 398.7; 399.6; 400.6; 401.4; 402.4; 408.1; 410.1; 415.3; 416.5; 417.5; 418.3.

Alternatives: Alternatives that would permit an unlimited number of pets at campgrounds, cabins or cottages or that would permit only one pet per facility were reviewed by operations staff. This compromise of a maximum 2 pets per site garnered the most support from the staff that are familiar with and manage the user conflicts between pets, pet owners, patrons and wildlife on a daily basis.

Federal Standards: None.

Compliance Schedule: Effective immediately upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted with this notice because the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed amendment relates to operations at campsites, cabins and cottages in those State Parks that allow pets and limits the number of pets at these facilities to 2 per reservation.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposed amendment relates to operations at campsites, cabins and cottages in those State Parks that allow pets. It limits the number of pets at these facilities to 2 per reservation.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rule will not have an impact on jobs and employment opportunities. The proposed rule establishes a limit of two pets at a campsite, cabin or cottage in a State Park where pets are allowed.

Public Service Commission

NOTICE OF ADOPTION

Issuance of one Share of Preferred Stock to GSS Holdings, Inc. and Amend its Certificates of Incorporation

I.D. No. PSC-19-10-00014-A

Filing Date: 2011-05-24

Effective Date: 2011-05-24

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

Action taken: On 5/19/11, the PSC adopted an order approving, with modifications a petition by Niagara Mohawk Power Corporation d/b/a National Grid to issue one share of preferred Voting Junior Preferred Stock to GSS Holdings, Inc. and to amend its Certificates of Inc.

Statutory authority: Public Service Law, section 69

Subject: Issuance of one share of preferred stock to GSS Holdings, Inc. and amend its Certificates of Incorporation.

Purpose: To approve the issuance of one share of preferred stock to GSS Holdings, Inc. and amend its Certificates of Incorporation.

Substance of final rule: The Commission, on May 19, 2011, adopted an order, with modifications, a petition by Niagara Mohawk Power Corporation d/b/a National Grid to issue one share of preferred Voting Junior Preferred Stock to GSS Holdings, Inc. and to amend its Certificates of Incorporation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (01-M-0075SA47)

NOTICE OF ADOPTION

Transfer of Electric Plant Property from Noble to NYSEG

I.D. No. PSC-23-10-00010-A
Filing Date: 2011-05-20
Effective Date: 2011-05-20

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

Action taken: On 5/19/11, the PSC adopted an order approving the petition of Noble Wethersfield Windpark, LLC (Noble) and New York State Electric & Gas Corporation (NYSEG) for transfer of electric plant property from Noble to NYSEG.

Statutory authority: Public Service Law, sections 4(1) and 70

Subject: Transfer of electric plant property from Noble to NYSEG.

Purpose: To approve the transfer of electric plant property from Noble to NYSEG.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving the petition of Noble Wethersfield Windpark, LLC (Noble) and New York State Electric & Gas Corporation (NYSEG) for transfer of the electric plant property from Noble to NYSEG, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-M-0158SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-38-10-00006-A
Filing Date: 2011-05-23
Effective Date: 2011-05-23

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

Action taken: On 5/19/11, the PSC adopted an order approving the petition of Driggs Avenue Place LLC to submeter electricity at 475 Driggs Avenue, Brooklyn, New York located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of Driggs Avenue Place LLC to submeter electricity at 475 Driggs Avenue, Brooklyn, New York.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving the petition of Driggs Avenue Place LLC to submeter electricity at 475 Driggs Avenue, Brooklyn, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-E-0423SA1)

NOTICE OF ADOPTION

Joint Proposal by Consolidated Edison and Staff to Retain a Portion of a Tax Refunds

I.D. No. PSC-41-10-00017-A
Filing Date: 2011-05-20
Effective Date: 2011-05-20

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

Action taken: On 5/19/11, the PSC adopted an order approving provisions of a Joint Proposal by Consolidated Edison Company of New York, Inc. (Consolidated Edison) and Public Service Commission Staff, dated March 29, 2011 to retain a portion of a tax refunds.

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

Subject: Joint Proposal by Consolidated Edison and Staff to retain a portion of a tax refunds.

Purpose: To approve a Joint Proposal by Consolidated Edison and Staff to retain a portion of a tax refunds.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving provisions of a Joint Proposal by Consolidated Edison Company of New York, Inc. (Consolidated Edison) and Public Service Commission Staff, dated March 29, 2011. Consolidated Edison is authorized to recover, prior to apportionment, \$1,240,269 for the incremental expense it incurred to achieve the Gross Receipts Tax and Excess Dividends Tax refunds and is authorized to retain for the benefit of its shareholders, \$1,358,703 from the Gross Receipts Tax refund and \$14,797,995 from the Excess Dividends Tax Refund, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-E-0308SA1)

NOTICE OF ADOPTION

Corning Natural Gas Corporation's Request to Discontinue the Regulatory Matrix

I.D. No. PSC-43-10-00013-A
Filing Date: 2011-05-19
Effective Date: 2011-05-19

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

Action taken: On 5/19/11, the PSC adopted an order approving Corning Natural Gas Corporation's request to remove all of the requirements of the Regulatory Matrix except for the cathodic protection reporting requirement.

Statutory authority: Public Service Law, section 65

Subject: Corning Natural Gas Corporation's request to discontinue the Regulatory Matrix.

Purpose: To approve the removal of the requirements of the Regulatory Matrix except for the cathodic protection reporting requirement.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving Corning Natural Gas Corporation's (Corning) request to remove all of the requirements of the Regulatory Matrix except for the cathodic protection reporting requirement, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-1137SA4)

NOTICE OF ADOPTION

Eligibility of Customers to Participate in EEPS Programs

I.D. No. PSC-49-10-00011-A

Filing Date: 2011-05-24

Effective Date: 2011-05-24

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

Action taken: On 5/19/11, the PSC adopted an order approving the petition of NYS Electric & Gas Corp. & Rochester Gas & Electric Corp. to eliminate the 100kW demand threshold for customer eligibility for Non-residential Commercial and Industrial Rebate program.

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

Subject: Eligibility of customers to participate in EEPS programs.

Purpose: To eliminate the 100kW demand threshold for customer eligibility for Non-residential Commercial and Industrial Rebate program.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving the petition of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to eliminate the 100kW demand threshold for customer eligibility for electric Non-residential Commercial and Industrial Custom Rebate programs, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-M-0548SA28)

NOTICE OF ADOPTION

Authorization for the Transfer of Substation Equipment and a Notice of Intent to Grant an Easement

I.D. No. PSC-51-10-00015-A

Filing Date: 2011-05-20

Effective Date: 2011-05-20

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

Action taken: On 5/19/11, the PSC adopted an order approving the joint petition of Consolidated Edison Company of New York, Inc. and Central Hudson Gas & Electric Corporation for the transfer of substation equipment and a Notice of Intent to Grant an Easement.

Statutory authority: Public Service Law, sections 2, 68, 69 and 70

Subject: Authorization for the transfer of substation equipment and a Notice of Intent to Grant an Easement.

Purpose: To approve the transfer of substation equipment and a Notice of Intent to Grant an Easement.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving the joint petition of Consolidated Edison Company of New York, Inc. and Central Hudson Gas & Electric Corporation for the transfer of substation equipment and a Notice of Intent to Grant an Easement, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-E-0553SA1)

NOTICE OF ADOPTION

To Waive the Billing Categories and Partial Payment Allocation Rules in 16 NYCRR § 606.4 and § 606.5

I.D. No. PSC-51-10-00021-A

Filing Date: 2011-05-19

Effective Date: 2011-05-19

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

Action taken: On 5/19/11, the PSC adopted an order approving Verizon of New York Inc.'s request to waive the billing categories and partial payment allocation rules in 16 NYCRR § 606.4 and § 606.5.

Statutory authority: Public Service Law, section 94(2)

Subject: To waive the billing categories and partial payment allocation rules in 16 NYCRR § 606.4 and § 606.5.

Purpose: To approve a waiver of the billing categories and partial payment allocation rules in 16 NYCRR § 606.4 and § 606.5.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving Verizon of New York Inc.'s request to waive the billing categories and partial payment allocation rules in 16 NYCRR § 606.4 and § 606.5 as amended in the Commission's Order Approving Settlement Agreement, issued August 7, 1992, and Order Approving Modification of the Settlement Agreement, issued December 30, 1993, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-C-0609SA1)

NOTICE OF ADOPTION

To Expand Hourly Pricing Provisions to Customers with Demand Greater than 500 kW

I.D. No. PSC-02-11-00008-A

Filing Date: 2011-05-20

Effective Date: 2011-05-20

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

Action taken: On 5/19/11, the PSC adopted an order approving Rochester Gas and Electric Corporation's Plan to expand Hourly Pricing Provisions to customers with demand greater than 500 kW in any two months during the twelve months ended August 31, 2011.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12)

Subject: To expand Hourly Pricing Provisions to customers with demand greater than 500 kW.

Purpose: To approve Rochester Gas and Electric Corporation's Plan to expand Hourly Pricing Provisions.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving Rochester Gas and Electric Corporation's Plan to expand Hourly Pricing Provisions to customers with demand greater than 500 kW in any two months during the twelve months ended August 31, 2011, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-E-0717SA2)

NOTICE OF ADOPTION

Norse' Transfer of its Ownership of Gas Transportation Service Providers

I.D. No. PSC-05-11-00007-A

Filing Date: 2011-05-24

Effective Date: 2011-05-24

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

Action taken: On 5/19/11, the PSC adopted an order approving Appalachian Transmission and Marketing LLC & Norse Energy Holdings, Inc.'s petition for a transfer of all of the ownership interests in Norse Pipeline LLC and Nornew Energy Supply, Inc. to Appalachian.

Statutory authority: Public Service Law, sections 2(11), 5(1)(b) and 70

Subject: Norse' transfer of its ownership of gas transportation service providers.

Purpose: To approve Norse' transfer of its ownership of gas transportation service providers.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving Appalachian Transmission and Marketing LLC (Appalachian) and Norse Energy Holdings, Inc.'s (Norse Holdings) petition, pursuant to Public Service Law § 70, of the transfer of all of the ownership interests in Norse Pipeline LLC and Nornew Energy Supply, Inc. from Norse Holdings to Appalachian, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (11-G-0004SA1)

NOTICE OF ADOPTION

Discontinue the Expanded Residential Electric HVAC Energy Efficiency Program and Cost Recovery

I.D. No. PSC-07-11-00005-A

Filing Date: 2011-05-24

Effective Date: 2011-05-24

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

Action taken: On 5/19/11, the PSC adopted an order approving Central

Hudson Gas & Electric Corporation's petition to discontinue the Expanded Residential Electric HVAC Energy Efficiency program and be granted relief from any utility incentives or penalties.

Statutory authority: Public Service Law, section 66(1)

Subject: Discontinue the Expanded Residential Electric HVAC Energy Efficiency program and cost recovery.

Purpose: To discontinue the Expanded Residential Electric HVAC Energy Efficiency program and be granted relief from any utility incentives.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving Central Hudson Gas & Electric Corporation's petition to discontinue the Expanded Residential Electric HVAC Energy Efficiency program and be granted relief from any utility incentives or penalties tied to energy savings targets associated with the program, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-M-0548SA31)

NOTICE OF ADOPTION

To Revise its Dishonored Payment Fee

I.D. No. PSC-07-11-00008-A

Filing Date: 2011-05-19

Effective Date: 2011-05-19

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

Action taken: On 5/19/11, the PSC approved Central Hudson Gas & Electric Corporation's amendments to PSC 15 — Electricity, effective June 1, 2011 to revise its dishonored payment fee.

Statutory authority: Public Service Law, section 66(12)

Subject: To revise its dishonored payment fee.

Purpose: To approve amendments to PSC 15 — Electricity, effective June 1, 2011 for revisions to its dishonored payment fee.

Substance of final rule: The Commission, on May 19, 2011 approved Central Hudson Gas & Electric Corporation's amendments to PSC 15 — Electricity, effective June 1, 2011, to revise its dishonored payment fee.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (11-E-0042SA1)

NOTICE OF ADOPTION

To Revise its Dishonored Payment Fee

I.D. No. PSC-07-11-00009-A

Filing Date: 2011-05-19

Effective Date: 2011-05-19

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

Action taken: On 5/19/11, the PSC approved Central Hudson Gas & Electric Corporation's amendments to PSC 12 — Gas, effective June 1, 2011 to revise its dishonored payment fee.

Statutory authority: Public Service Law, section 66(12)

Subject: To revise its dishonored payment fee.

Purpose: To approve amendments to PSC 12 — Gas, effective June 1, 2011 for revisions to its dishonored payment fee.

Substance of final rule: The Commission, on May 19, 2011 approved Central Hudson Gas & Electric Corporation's amendments to PSC 12 — Gas, effective June 1, 2011, to revise its dishonored payment fee.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(11-G-0043SA1)

NOTICE OF ADOPTION

Minor Rate Filing

I.D. No. PSC-11-11-00004-A

Filing Date: 2011-05-23

Effective Date: 2011-05-23

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

Action taken: On 5/19/11, the PSC adopted an order approving, with modifications, the Village of Spencerport's amendments to PSC 1—Electricity, effective June 1, 2011, to increase annual revenues by \$195,344, or 6.9%.

Statutory authority: Public Service Law, section 66(12)

Subject: Minor rate filing.

Purpose: To approve, with modifications the Village of Spencerport's amendments to PSC 1—Electricity, effective June 1, 2011.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving, with modifications, the Village of Spencerport's amendments to PSC 1—Electricity, effective June 1, 2011, to increase annual revenues by \$195,344, or 6.9%, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(11-E-0073SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Central Hudson Gas and Electric Corporation Energy Efficiency Programs

I.D. No. PSC-23-11-00008-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a May 16, 2011 petition filed by Central Hudson Gas and Electric Corporation in Cases 07-M-0548 et al. to modify the funding for electric energy efficiency programs.

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

Subject: Central Hudson Gas and Electric Corporation energy efficiency programs.

Purpose: To modify approved energy efficiency program funding.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or take other action regarding a petition submitted May 16, 2011 by Central Hudson Gas and Electric Corporation (Central Hudson) in Cases 07-M-0548 et al. In its petition, Central Hudson requests to defer the incentive expenses it incurs in its electric Small Business Direct Install and Mid-size Commercial Business Energy Efficiency Portfolio Standards (EEPS) programs, from the time at which the existing funding is fully committed until such time as funding for 2010 becomes available, and to recover the deferred amounts out of 2012 funding. The Commission is also considering whether its resolution of the issues posed by Central Hudson's petition should be applied to other utility-administered EEPS programs.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(07-M-0548SP39)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-23-11-00009-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 405 W. 53rd Development Group, LLC to submeter electricity at 425 West 53rd Street, New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 405 W. 53rd Development Group, LLC to submeter electricity at 425 West 53rd Street, New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 405 W. 53rd Development Group, LLC to submeter electricity at 425 West 53rd Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(11-E-0110SP2)

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

Petition for the Submetering of Electricity

I.D. No. PSC-23-11-00010-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Park Towers South Co., LLC, to submeter electricity at 315/330 West 58th Street, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Park Towers South Co., LLC, to submeter electricity at 315/330 West 58th Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Park Towers South Co., LLC, to submeter electricity at 315/330 West 58th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(11-E-0239SP1)

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

Petition for the Submetering of Electricity

I.D. No. PSC-23-11-00011-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Amsterdam 78, LLC to submeter electricity at 230 West 78th Street, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Amsterdam 78, LLC to submeter electricity at 230 West 78th Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Amsterdam 78, LLC to submeter electricity at 230 West 78th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(11-E-0247SP1)

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

Whether to Grant, Deny or Modify, in Whole or in Part, Turner's Petition for a Waiver of Commission Policy and the NYSEG Tariff

I.D. No. PSC-23-11-00012-P

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

Proposed Action: The Public Service Commission is considering whether to grant, modify or deny, in whole or in part, the petition of Turner Engineering, PC for a waiver to allow rent inclusion of electricity (master metering) at 322 Chenango St., Binghamton, NY.

Statutory authority: Public Service Law, sections 4, 5, 65(5), 66(1), (2) and (4)

Subject: Whether to grant, deny or modify, in whole or in part, Turner's petition for a waiver of Commission policy and the NYSEG tariff.

Purpose: Whether to grant, deny or modify, in whole or in part, Turner's petition for a waiver of Commission policy and the NYSEG tariff.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition of Turner Engineering, PC for waiver of the Commission's policy contained in Opinion 76-17 to allow for the rent inclusion of electricity (master metering) in new or refurbished residential construction and the tariff of New York State Electric & Gas Corporation for a housing facility serving chronically homeless individuals, located at 322 Chenango Street, Binghamton, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(11-E-0248SP1)

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

Program Categories and Budgets for Technology and Market Development Programs and Collections to Support Such Programs

I.D. No. PSC-23-11-00013-P

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

Proposed Action: The Commission is considering the System Benefit Charge Operating Plan for Technology and Market Development Programs submitted by the New York State Energy Research and Development Authority on May 16, 2011 in Case 10-M-0547.

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

Subject: Program categories and budgets for technology and market development programs and collections to support such programs.

Purpose: To promote electric and gas technology innovations and market development in New York.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a proposed System Benefit Charge (SBC) "Operating Plan for Technology and Market Development Programs" for the period 2012-2016 submitted by the New York State Energy Research and Development Authority (NYSERDA) on May 16, 2011 in Case 10-M-0457. The SBC program was initiated in 1998 to preserve the public benefits of programs previously provided to our society by regulated monopoly utilities. It provides programs to encourage energy efficiency, a cleaner environment and to reduce the financial burden of energy costs on low-income New Yorkers. In 2005, the SBC programs were renewed and extended through June 30, 2011. In 2008, the SBC programs were further enhanced with electric and gas energy efficiency programs constituting the Energy Efficiency Portfolio Standard (EEPS) which were generally authorized through December 31, 2011.

On December 30, 2010, the Commission issued an "Order Continuing System Benefit Charge Funded Programs" in Case 10-M-0457. Among other actions, that order approved a six-month extension of SBC III through December 31, 2011 and the transition of SBC energy efficiency resource acquisition programs to the Energy Efficiency Portfolio Standard (EEPS) portfolio. The order also set the annual SBC III collections for 2012 at \$87,237,122 for electric and \$0 for gas. Beginning on January 1, 2013, the order set the annual SBC III collections at \$83,912,087 for electric and \$6,212,913 for gas. The order deferred a decision on NYSEDA's proposed Technology and Market Development (T&MD) portfolio and directed NYSEDA to submit a detailed operating plan for its T&MD portfolio upon completion of an intensive outreach process with all stakeholders.

NYSERDA's current T&MD proposal includes seven initiatives divided into three categories: i) Power Supply and Delivery - containing the "Smart Grid and Electric Vehicle Infrastructure" and "Advanced Clean Power" initiatives; ii) Building Systems - containing the "Advanced Buildings" and "Advanced Energy Codes and Standards" initiatives; and iii) Clean Energy Infrastructure - containing the "Market Development," "Clean Energy Business Development" and the "Environmental Monitoring, Evaluation and Protection" initiatives.

NYSERDA's proposed T&MD portfolio operating plan includes a total budget of approximately \$410.1 million over five years (January 1, 2012 until December 31, 2016) for the seven T&MD initiatives. That figure represents an average annual budget of \$82 million consisting of i) \$70 million in program costs for the seven T&MD initiatives and ii) \$12 million for administration, evaluation and the New York State Cost Recovery Fee.

NYSERDA expects that the T&MD portfolio will produce cumulative savings of 564,700 MWh by 2015 and 1,730,250 MWh when fully implemented. NYSEDA indicates that the T&MD will achieve 3,864,003 MMBtu of fossil fuel savings when fully implemented.

The Commission will be considering a schedule of collections from electric and gas ratepayers through the System Benefit Charge to provide NYSEDA with the funds necessary to support expenditures on the programs. If an allocation of collections from gas customers is approved, and costs are to be collected from gas ratepayers, the Commission may have to raise the cap it previously imposed on annual SBC collections from gas ratepayers by a similar amount.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(10-M-0457SP2)

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

System Reliability

I.D. No. PSC-23-11-00014-P

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

Proposed Action: The Commission is considering a proposed tariff filing by National Fuel Gas Distribution Corporation to make various changes in its rates, charges, rules and regulations contained in its Schedule for Gas, P.S.C. No. 8.

Statutory authority: Public Service Law, section 66(12)

Subject: System Reliability.

Purpose: To enhance system reliability.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by National Fuel Gas Distribution Corporation (the Company) to: (1) modify the Company's storage inventory balance requirements; (2) make revisions related to the acquisition and use of interstate pipeline transmission capacity; (3) revise the imbalance procedure for S.C. No. 21 - Gas for Electric Generation and (4) make housekeeping changes to streamline the Company's tariff. The proposed filing has an effective date of August 31, 2011.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(11-G-0272SP1)

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

To Enter into a Loan Agreement with the Adirondack Trust Company for up to an Amount of \$1,389,500

I.D. No. PSC-23-11-00015-P

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

Proposed Action: The Commission is considering a petition filed by Saratoga Water Services Inc. for approval of a loan of \$1,389,500 with the Adirondack Trust Company to install a new well and retire an old loan.

Statutory authority: Public Service Law, section 89-f

Subject: To enter into a loan agreement with the Adirondack Trust Company for up to an amount of \$1,389,500.

Purpose: To consider allowing Saratoga Water Services Inc. to enter into a loan agreement with the Adirondack Trust Company.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Saratoga Water Services Inc. for approval of a loan agreement with the Adirondack Trust Company. Saratoga Water Services Inc. is also proposing to retire an old loan of \$ 619,500 and to install a new well costing \$770,000. Saratoga Water Services Inc. wants to issue and sell long-term debt in the amount not to exceed \$1,389,500 (\$619,500 + \$770, 000). The Commission shall consider all other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(11-W-0246SP1)

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

A Proposed Budget for Combined Heat and Power Projects and Collections to Support Such Projects

I.D. No. PSC-23-11-00016-P

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

Proposed Action: The Commission is considering NYSEERDA's request for an incremental \$15 million and associated administrative costs for a Combined Heat and Power initiative submitted as part of its proposed "Operating Plan for Technology and Market Development Programs."

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

Subject: A proposed budget for Combined Heat and Power projects and collections to support such projects.

Purpose: To promote electric and gas energy conservation programs in New York.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a request for \$15 million in "incremental funding" for a Combined Heat and Power initiative as part of the New York State Energy Research and Development Authority's (NYSEERDA) proposed System Benefit Charge (SBC) "Operating Plan for Technology and Market Development Programs" for the period 2012-2016 submitted on May 16, 2011 in Case 10-M-0457.

On December 30, 2010, the Commission issued an "Order Continuing System Benefit Charge Funded Programs" in Case 10-M-0457. Among other actions, that order approved a six-month extension of SBC III through December 31, 2011 and the transition of SBC energy efficiency resource acquisition programs to the Energy Efficiency Portfolio Standard (EEPS) portfolio. The order also set the annual SBC collections for 2012 at \$87,237,122 for electric and \$0 for gas. Beginning on January 1, 2013, the order set the annual SBC collections at \$83,912,087 for electric and \$6,212,913 for gas. The order deferred a decision on NYSEERDA's proposed Technology and Market Development (T&MD) portfolio and directed NYSEERDA to submit a detailed operating plan for its T&MD portfolio upon completion of an intensive outreach process with all stakeholders.

NYSEERDA's proposed T&MD portfolio operating plan includes a total budget of approximately \$87.9 million over five years (January 1, 2012 until December 31, 2016) for an incremental Combined Heat and Power program. Combined heat and power systems use thermal energy from power generation equipment for cooling, heating and humidity control. The \$87.9 million budget figure represents an average annual budget of \$17.6 million consisting of \$15 million in "incremental funding" for Combined Heat and Power, and \$2.6 million for administration, evaluation and the New York State Cost Recovery Fee. NYSEERDA does not propose specific MWh or MMBtu savings targets for the Combined Heat and Power portion of its proposed T&MD portfolio.

The Commission will be considering a schedule of collections from electric and gas ratepayers through the System Benefit Charge to provide NYSEERDA with the funds necessary to support expenditures on the program. If an allocation of collections from gas customers is approved, and costs are to be collected from gas ratepayers, the Commission may have to raise the cap it previously imposed on annual SBC collections from gas ratepayers by a similar amount.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(10-M-0457SP3)

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

Discontinuance of Water Service

I.D. No. PSC-23-11-00017-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part or modify a petition filed by Garrow Water Works Company, Inc., requesting approval to abandon its water system.

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

Subject: Discontinuance of water service.

Purpose: To allow the Garrow Water Works Company, Inc., to abandon its water system.

Substance of proposed rule: On May 12, 2011, Garrow Water Works Company, Inc. (the company) filed a petition requesting Public Service Commission approval to abandon its water system. The company provides unmetered water service to 47 residential customers in the Fildowns Country Homes Subdivision located in the Town of Schuylers Falls, Clinton County.

Details of the company's filing are available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under Commission documents and scrolling down to Search Commission Case Related Documents. The company's filing can be ascertained either by typing in the company name or using the case number assigned (11-W-0236). The Commission may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(11-W-0236SP1)

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

NYSEERDA's Energy Efficiency Program for Low-Income Customers

I.D. No. PSC-23-11-00018-P

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

Proposed Action: The Commission is considering an April 26, 2011 petition filed by New York State Research and Development Authority to modify an order issued October 18, 2011 in Cases 07-M-0548 et al. regarding the treatment of certain types of equipment replacements.

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

Subject: NYSEERDA's energy efficiency program for low-income customers.

Purpose: To promote energy conservation in New York State.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, or to take other action regarding a petition filed on April 26, 2011 by the New York State Research and Development Authority (NYSEERDA) in the Energy Efficiency Portfolio Standard (EEPS) proceeding, Cases 07-M-0548 et al. The petition requests modification to the Public Service Commission's October 18, 2010 Order that established a type of equipment replacement treat-

ment for energy efficiency programs, “the special circumstance” replacement, that applies only to programs for commercial and industrial customers and multifamily buildings. Through its petition, NYSEERDA proposes that this special circumstance treatment also be extended to energy efficiency projects for low-income customers funded through NYSEERDA’s EmPower New York Program. A Commission decision here may be applied to other EEPs programs.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(07-M-0548SP40)