

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

NOTICE OF ADOPTION

Host Material (Potatoes, Tomatoes and Eggplants) and Soil

I.D. No. AAM-44-14-00004-A

Filing No. 27

Filing Date: 2015-01-12

Effective Date: 2015-01-28

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

Action taken: Amendment of section 127.2 of Title 1 NYCRR.

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

Subject: Host material (potatoes, tomatoes and eggplants) and soil.

Purpose: To lift the golden nematode quarantine in portions of Nassau, Suffolk and Orleans Counties.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. AAM-44-14-00004-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification

for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

New York State Common Core Learning Standards (CCLS)

I.D. No. EDU-44-14-00019-E

Filing No. 29

Filing Date: 2015-01-13

Effective Date: 2015-01-19

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

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

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

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015, and August 2015 examination administrations.

The proposed amendment was adopted at the October 20-21, 2014 Regents meeting as an emergency rule, effective October 21, 2014, and has now been adopted as a permanent rule at the January 12-13, 2015 Regents meeting. Pursuant to SAPA section 203(1), the earliest effective date of the permanent rule is January 28, 2015, the date a Notice of Adoption is published in the State Register. However the emergency rule adopted at the October 2014 Regents meeting will expire on January 18, 2015. A lapse in the rule's effect date may disrupt opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015 examination administration.

Emergency action is necessary for the preservation of the general welfare in to ensure that the emergency rule adopted at the October 2014 Regents meeting remains continuously in effect until the effective date of the rule's adoption as a permanent rule.

Subject: New York State Common Core Learning Standards (CCLS).

Purpose: To provide additional opportunities for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2015, June 2015 and August 2015 test administrations.

Text of emergency rule: Subparagraph (i) of paragraph (1) of subdivision

(g) of section 100.5 of the Regulations of the Commissioner is amended, effective January 19, 2015, as follows:

(i) English.

(a) Students who first enter grade 9 in September 2013 and thereafter shall meet the English requirement for graduation in clause (a)(5)(i)(a) of this section by passing the Regents examination in English language arts (common core) or an approved alternative pursuant to section 100.2(f) of this Part.

(b) Students who first enter grade 9 prior to September 2013 shall meet the English requirement for graduation in clause (a)(5)(i)(a) of this section by:

(1) successfully completing a course in English language arts (common core) and passing the Regents examination in English language arts (common core) or an approved alternative pursuant to section 100.2(f) of this Part; or

(2) successfully completing a course in English aligned to the 2005 Learning Standards and passing the Regents comprehensive examination in English or an approved alternative pursuant to section 100.2(f) of this Part; provided that for the January 2014, June 2014 [and], August 2014, January 2015, June 2015, and August 2015 administrations only, students enrolled in English language arts (common core) courses may, at the discretion of the applicable school district, take the Regents comprehensive examination in English in addition to the Regents examination in English language arts (common core), and may meet such English requirement by passing either examination.

(c) ...

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-44-14-00019-EP, Issue of November 5, 2014. The emergency rule will expire March 13, 2015.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

At their July 2013 meeting, the Board of Regents adopted by emergency action, effective July 30, 2013, a new Commissioner's Regulation

§ 100.5(g) to allow students to meet diploma requirements by passing Regents Examinations in English Language Arts and mathematics that are aligned to the New York State P-12 Common Core Learning Standards. § 100.5(g) was permanently adopted at the October 2013 Regents meeting. Included in the new regulation is a provision in § 100.5(g)(1)(i)(b)(2) that allows, at local discretion and for the June 2014 and August 2014 administrations only, students enrolled in Common Core English courses may, at local discretion, take the Regents Comprehensive Examination in English (2005 Learning Standards) in addition to the Regents Examination in ELA (Common Core) and may meet the English requirement for graduation by passing either examination. In November 2013, the Regents adopted an emergency amendment to that regulation to include the January 2014 administration as well.

The proposed amendment would extend that flexibility to the January, June and August 2015 administrations.

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 is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs on school districts or charter schools. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

6. PAPERWORK:

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

7. DUPLICATION:

The rule does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the rule and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA examinations, and does not impose any additional compliance requirements or costs on school districts or charter schools. It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to implement requirements for transitioning to the New York State Common Core English Language Arts (ELA) examinations. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 34 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts and charter schools. The proposed amendment implements Regents policy to provide, at local discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs on school districts or charter schools. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on school districts or charter schools. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs or compliance requirements on school districts or charter schools. The proposed amendment implements Regents policy to provide, at local discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy providing for a transition to the New York State Common Core Learning Standards (CCLS) adopted at the January 2011 Regents meeting. Accordingly, there is no need for a shorter review period.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

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

The proposed amendment does not impose any additional compliance requirements on school districts and charter schools. The proposed amendment implements Regents policy to provide, at local discretion, additional opportunities for students enrolled in Common Core English Language

Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs on school districts or charter schools. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs or compliance requirements on school districts or charter schools. The proposed amendment implements Regents policy to provide, at local discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

Because the Regents policy upon which the proposed amendment is based applies to all school districts and BOCES in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy providing for a transition to the New York State Common Core Learning Standards (CCLS) adopted at the January 2011 Regents meeting. Accordingly, there is no need for a shorter review period.

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

Job Impact Statement

The proposed amendment is necessary to implement requirements for transitioning to the New York State Common Core English Language Arts (ELA) examinations. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

**EMERGENCY
RULE MAKING**

Duration of Competition in High School Athletics

I.D. No. EDU-44-14-00024-E

Filing No. 36

Filing Date: 2015-01-13

Effective Date: 2015-01-19

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

Action taken: Amendment of section 135.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 803(not subdivided), 3204(2) and (3)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to clarify when a student's eligibility for senior high school athletic competition may be extended because of illness or accident, as set forth in Commissioner's Regulations § 135.4(c)(7)(ii)(b)(1)(i). The proposed amendment provides that an extension may be granted for a student's illness or accident.

The proposed amendment was adopted at the October 20-21, 2014 Regents meeting as an emergency rule, effective October 21, 2014, and has now been adopted as a permanent rule at the January 12-13, 2015 Regents meeting. Pursuant to SAPA section 203(1), the earliest effective date of the permanent rule is January 28, 2015, the date a Notice of Adoption is published in the State Register. However, the emergency rule adopted at the October 2014 Regents meeting will expire on January 18, 2015. A lapse in the rule's effect date may disrupt extensions of high school athletic competition caused by illness, accident. Therefore, emergency action is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the October 2014 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Duration of competition in high school athletics.

Purpose: Clarifies when a student's eligibility for senior high school athletic competition may be extended for illness or accident.

Text of emergency rule: Subclause (1) of clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective January 19, 2015, as follows:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause, or except as authorized by a waiver granted under clause (d) of this subparagraph to a student with a disability. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) or clause (d) of this subparagraph, or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances.

(i) If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness[,] or accident [, or similar circumstances beyond the control of the student], such pupil's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must include documentation showing that as a direct result of the illness[,] or accident [or other circumstance beyond the control of the student], the pupil will be required to attend school for one or more additional semesters in order to graduate.

(ii) . . .

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-44-14-00024-EP, Issue of November 5, 2014. The emergency rule will expire March 13, 2015.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 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 the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law sections 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.

Education Law section 803 provides the Board of Regents with overall authority over physical education instruction in schools.

Education Law section 3204(2) and (3) relate to compulsory education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the age and four-year duration of competition limitations for athletic competition.

3. NEEDS AND BENEFITS:

Commissioner's Regulation section 135.4(c)(7)(ii)(b)(1), establishes the parameters for participation in senior high school interschool athletic competition. The duration of competition rule limits the participation of pupils in high school athletic competition to four consecutive seasons commencing with the pupil's entry into the ninth grade and prior to graduation. A request for an extension of duration of competition for a pupil's failure to enter competition during one or more seasons may be granted, only if sufficient evidence demonstrates that the pupil's failure to enter competition during one or more seasons was directly caused by illness, accident, or similar circumstances beyond the control of the student.

Department guidance indicates that the existing language providing for an extension upon evidence that the student's participation was impacted by "similar circumstances beyond the control of the student" is limited to circumstances related to such illness or accident. However, confusion continues to exist among school districts, students and parents. This regulatory amendment is necessary to provide clarity to the field regarding the circumstances under which a duration of competition extension may be granted. The proposed amendment provides that an extension may be granted if sufficient evidence is presented to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness or accident. Such clarification is intended to ensure safe and equitable competition.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

6. PAPERWORK:

This proposed amendment does not impose any additional paperwork requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to clarify when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. This proposed amendment does not impose any costs or compliance requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

Regulatory Flexibility Analysis**Small Businesses:**

The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:**1. EFFECT OF RULE:**

The proposed amendment applies to each of the 695 school districts within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements or costs on school districts.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional costs or compliance requirements on school districts, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. Commissioner's Regulation section 135.4(c)(7)(ii)(b)(1), establishes the parameters for participation in senior high school interschool athletic competition. The duration of competition rule limits the participation of pupils in high school athletic competition to four consecutive seasons commencing with the pupil's entry into the ninth grade and prior to graduation. A request for an extension of duration of competition for a pupil's failure to enter competition during one or more seasons may be granted, only if sufficient evidence demonstrates that the pupil's failure to enter competition during one or more seasons was directly caused by illness, accident, or similar circumstances beyond the control of the student.

Department guidance indicates that the existing language providing for an extension upon evidence that the student's participation was impacted by "similar circumstances beyond the control of the student" is limited to circumstances related to such illness or accident. However, confusion continues to exist among school districts, students and parents. This regulatory amendment is necessary to provide clarity to the field regarding the circumstances under which a duration of competition extension may be granted. The proposed amendment provides that an extension may be granted if sufficient evidence is presented to show that the pupil's failure to enter competition during one or more seasons of a sport was caused illness or accident. Such clarification is intended to ensure safe and equitable competition.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on school districts in ru-

ral areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on school districts in rural areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional costs or compliance requirements on school districts in rural areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. Commissioner's Regulation section 135.4(c)(7)(ii)(b)(1), establishes the parameters for participation in senior high school interschool athletic competition. The duration of competition rule limits the participation of pupils in high school athletic competition to four consecutive seasons commencing with the pupil's entry into the ninth grade and prior to graduation. A request for an extension of duration of competition for a pupil's failure to enter competition during one or more seasons may be granted, only if sufficient evidence demonstrates that the pupil's failure to enter competition during one or more seasons was directly caused by illness, accident, or similar circumstances beyond the control of the student.

Department guidance indicates that the existing language providing for an extension upon evidence that the student's participation was impacted by "similar circumstances beyond the control of the student" is limited to circumstances related to such illness or accident. However, confusion continues to exist among school districts, students and parents. This regulatory amendment is necessary to provide clarity to the field regarding the circumstances under which a duration of competition extension may be granted. The proposed amendment provides that an extension may be granted if sufficient evidence is presented to show that the pupil's failure to enter competition during one or more seasons of a sport was caused illness or accident. Such clarification is intended to ensure safe and equitable competition.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have 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 RULE MAKING

Appeals Process on Regents Exams Passing Score for English Language Learners (ELLs)

I.D. No. EDU-44-14-00026-E

Filing No. 34

Filing Date: 2015-01-13

Effective Date: 2015-01-19

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

Action taken: Amendment of section 100.5(d)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 215(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided), 2117(1), 3204(2), (2-a), (3) and (6)

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

Specific reasons underlying the finding of necessity: The proposed amendment would create an additional English Language Learner (ELL) specific pathway to graduation for qualifying ELL students who are otherwise eligible to graduate but for their score on the English Language Arts (ELA) Regents examination. Under the proposed amendment, ELLs who entered the United States in 9th grade or above in the 2010-11 school year and thereafter, and who score between 55-61 on the Regents Exam in

English after two attempts at attaining a score of 65 or above, are also eligible to receive a local diploma via an appeal process if they:

- Successfully appeal the Regents Exam in English AND score at least 65 on each of the four remaining required Regents exams; OR
- Successfully appeal the Regents Exam in English AND score at least 65 on three other required Regents exams AND score between 62 to 64 on one other required Regents exam and successfully appeal that exam.

The proposed amendment was adopted at the October 20-21, 2014 Regents meeting as an emergency rule, effective October 21, 2014, and has now been adopted as a permanent rule at the January 12-13, 2015 Regents meeting. Pursuant to SAPA section 203(1), the earliest effective date of the permanent rule is January 28, 2015, the date a Notice of Adoption is published in the State Register. However the emergency rule adopted at the October 2014 Regents meeting will expire on January 18, 2015. A lapse in the rule's effect date may disrupt the ability of English Language Learners (ELLs) who enter the United States in 9th grade or above in the 2010-11 school year and thereafter to graduate with a Local Diploma pursuant to an appeal process, as set forth in the proposed amendment, if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score. Emergency action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the October 2014 Regents meeting remains continuously in effect until the effective date of the rule's adoption as a permanent rule.

Subject: Appeals process on Regents exams passing score for English Language Learners (ELLs).

Purpose: To allow ELLs who enter the United States in 9th grade or above in the 2010-11 school year and thereafter to graduate with a Local Diploma if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score.

Text of emergency rule: Paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective January 19, 2015, as follows:

(7) Appeals process on Regents examinations passing score to meet Regents diploma requirements.

(i) School districts shall provide unlimited opportunities for all students to retake required Regents examinations to improve their scores.

(a) A student who first enters grade nine in September 2005 or thereafter and who fails, after at least two attempts, to attain a score of 65 or above on a required Regents examination for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

[(a)] (1) has scored within three points of the 65 passing score on the required Regents examination under appeal and has attained at least a 65 course average in the subject area of the Regents examination under appeal;

[(b)] (2) provides evidence that he or she has received academic intervention services by the school in the subject area of the Regents examination under appeal;

[(c)] (3) has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents examination under appeal;

[(d)] (4) has attained a course average in the subject area of the Regents examination under appeal that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; and

[(e)] (5) is recommended for an exemption to the passing score on the required Regents examination under appeal by his or her teacher or department chairperson in the subject area of such examination.

(b) A student who first enters school in the United States (the 50 States and the District of Columbia) in grade nine, ten, eleven or twelve in September 2010 or thereafter, is identified as an English Language Learner pursuant to Part 154 of this Title, and fails, after at least two attempts, to attain a score of 65 or above on the Regents comprehensive examination in English or the Regents examination in English language arts (common core), as required by this section for graduation, shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no such student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

(1) has scored between 55 and 61 on the required Regents comprehensive examination in English or Regents examination in English language arts (common core) under appeal;

(2) provides evidence that he or she has received academic intervention services by the school in English language arts;

(3) has an attendance rate of at least 95 percent for the school

year during which the student last took the required Regents comprehensive examination in English or Regents examination in English language arts (common core);

(4) has attained a course average in English language arts that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; and

(5) is recommended for an exemption to the passing score on the required Regents comprehensive examination in English or Regents examination in English language arts (common core) by his or her teacher or department chairperson in English language arts.

[(ii)] (c) An appeal may be initiated by the student, the student's parent or guardian, or the student's teacher, and shall be submitted in a form prescribed by the commissioner to the student's school principal.

[(iii)] (d) The school principal shall chair a standing committee comprised of three teachers (not to include the student's teacher in the subject area of the Regents examination under appeal) and two school administrators (one of whom shall be the school principal). The standing committee shall review an appeal within 10 school days of its receipt and make a recommendation to the school superintendent or, in the City School District of the City of New York, to the chancellor of the city school district or his/her designee, to accept or deny the appeal. The standing committee may interview the teacher or department chairperson who recommended the appeal, and may also interview the student making the appeal to determine that he or she has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(iv)] (e) The school superintendent or, in the City School District of the City of New York, the chancellor of the city school district or his/her designee, shall make a final determination to accept or deny the appeal. The school superintendent or chancellor or chancellor's designee may interview the student making the appeal to determine that the student has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(v)] (f) Diplomas.

(1) A student whose appeal is accepted for one required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations, shall earn a Regents diploma.

(2) A student whose appeal is accepted for two required Regents examinations pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regents examinations, shall earn a local diploma.

(3) A student whose appeal is accepted for the required Regents comprehensive examination in English or Regents examination in English language arts (common core) pursuant to clause (b) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations, shall earn a local diploma.

(4) A student whose appeal is accepted for the required Regents comprehensive examination in English or Regents examination in English language arts (common core) pursuant to clause (b) of subparagraph (i) of this paragraph and for one other required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regents examinations shall earn a local diploma.

[(vi)] (g) Each school shall keep a record of all appeals received and granted and report this information to the State Education Department on a form prescribed by the commissioner. All school records relating to appeals of scores on required Regents examinations shall be made available for inspection by the State Education 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-44-14-00026-EP, Issue of November 5, 2014. The emergency rule will expire March 13, 2015.

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

Regulatory Impact Statement

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 Regents and the Commissioner to adopt rules and regulations to carry out State laws regarding education and the functions and duties conferred on the State Education 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 215 authorizes the Regents and the Commissioner to require school districts to prepare and submit reports containing such information as they may prescribe.

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 execute all educational policies determined by the Regents.

Education Law section 2117(1) empowers the Regents and the Commissioner to require school districts to submit any information they deem appropriate.

Education Law section 3204(2) and (2-a) provide for instructional programs for pupils with limited English proficiency (LEP) to be conducted in accordance with regulations of the Commissioner. Education Law section 3204(3) authorizes the Commissioner to establish standards for the instruction of LEP children, and section 3204(6) requires the Commissioner to establish standards by regulation.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

NEEDS AND BENEFITS:

Federal civil rights and education laws, as well as federal court jurisprudence, require that English Language Learner (ELL) students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Commissioner's Regulations contain standards for educational services provided to ELLs in New York State to meet these federal obligations.

The proposed amendment is necessary to implement policy adopted by the Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Throughout the process that resulted in the recent Regents action to amend Part 154 to add new Subparts 154-1 and 154-2 (EDU-27-14-00011-A; State Register, October 1, 2014), stakeholders raised concerns regarding the graduation rate of ELLs. While former ELLs generally achieve graduation rates almost equal to that of all non-ELLs, the graduation rate of current ELLs lags well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of the ELLs who are not graduating on time first entered school in the United States in high school. Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. The proposed rule will make a Local Diploma available to those ELLs who score at least 55 on the Regents examination in English after two attempts to score a 65, and meet other existing appeals requirements that apply to ELLs and non-ELLs alike.

Section 100.5(d)(7) of the Commissioner's Regulations currently al-

lows for all students, ELLs and non-ELLs, to be eligible to apply for the Local Diploma via appeal if they:

- Score 65+ on three Regents exams; AND
- Score 62-64 on two Regents exams.

Under the proposed amendment, ELLs who entered the United States in 9th grade or above in the 2010-11 school year and thereafter, and who score between 55-61 on the Regents Exam in English after two attempts at attaining a score of 65 or above, are also eligible to receive the Local Diploma via appeal if they:

- Successfully appeal the Regents Exam in English AND score at least 65 on each of the four remaining required Regents exams; OR
- Successfully appeal the Regents Exam in English AND score at least 65 on three other required Regents exams AND score between 62 to 64 on one other required Regents exam and successfully appeal that exam.

To be eligible to appeal a score on the Regents Exam in English, ELLs would also have to meet these conditions:

- The student has received academic intervention services in English language arts; AND
- The student has an attendance rate of at least 95 percent for the school year during which the student last took the Regents examination in English; AND
- The student has attained a course average in English language arts that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; AND
- The student is recommended for an exemption to the passing score on the Regents examination by his or her teacher or department chairperson.

Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other Regents appeals. ELL students would remain eligible for the current appeals process as well.

COSTS:
(a) Costs to State government: The proposed amendment is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act of 1974 (EEOA) and does not impose any additional costs on State government, including the State Education Department, beyond those costs imposed by the statutes.

(b) Costs to local government: The proposed amendment will not impose any significant costs on local governments. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

(c) Costs to private regulated parties: none.

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

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon school districts. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well.

PAPERWORK:

The proposed amendment will not require any additional paperwork beyond what is necessary to process a limited number of additional appeals for a local diploma from qualifying late entry ELLs who score a 55-61 on the Regents examination in English after two tries who meet other conditions for appeal. Appeals by ELLs under the proposed amendment would be subject to the existing requirement in section 100.5(d)(7) that each school keep a record of all appeals received and granted and report this information to Department on a form prescribed by the Commissioner. All school records relating to appeals of scores shall be made available for inspection by the Department.

DUPLICATION:

The proposed amendment is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA and does not duplicate existing State or Federal requirements.

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

The proposed amendment is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA. These laws require states and school districts to provide ELL students with appropriate services to overcome language barriers. In addition, federal jurisprudence in landmark cases such as *Castañeda v. Pickard* established standards to ensure compliance with EEOA. For example, the *Castañeda* standard mandates that programs for language-minority students must be (1) based on a sound educational theory, (2) implemented effectively with sufficient resources and personnel, and (3) evaluated to determine whether they are effective in helping students overcome language barriers.

COMPLIANCE SCHEDULE:

It is anticipated that school districts and BOCES will be able to achieve compliance with the proposed amendment by its effective date. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

Regulatory Flexibility Analysis**Small Businesses:**

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The proposed amendment does not impose any adverse economic impact, reporting, record keeping or 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 steps 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 each of the 689 public school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on local governments. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on local governments.

4. COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs on school districts or BOCES. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. The proposed amendment is expected to be a long-term cost saving measure in that it will boost the graduation

rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in the state.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on school districts. Economic feasibility is addressed above under compliance costs.

6. MINIMIZE ADVERSE IMPACT:

The proposed amendment implements policy adopted by the Board of Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. The proposed amendment is expected to be a long-term cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in the State.

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. The proposed amendment will expand access to the Local Diploma to this precise group of ELLs who are in a position to benefit from the opportunity to obtain postsecondary education or enter a career with a high school diploma. Because ELLs by definition are not yet fluent in English, this alternate pathway to graduation facilitates equal access to the Local Diploma. The proposed amendment minimizes the adverse impact of denying ELLs who satisfy all other conditions for appeal the ability to attain a high school diploma on account of their lack of fluency in English.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

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

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment applies to all school districts and boards of

cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on school districts and BOCES located in rural areas. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

3. COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs on school districts or BOCES located in rural areas. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. The proposed amendment is expected to be a long-term cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements policy adopted by the Board of Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts or BOCES located in rural areas. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. The proposed amendment is expected to be a long-term cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in the State.

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. The proposed amendment will expand access to the Local Diploma to this precise group of ELLs who are in a po-

sition to benefit from the opportunity to obtain postsecondary education or enter a career with a high school diploma. Because ELLs by definition are not yet fluent in English, this alternate pathway to graduation facilitates equal access to the Local Diploma. The proposed amendment minimizes the adverse impact of denying ELLs who satisfy all other conditions for appeal the ability to attain a high school diploma on account of their lack of fluency in English.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). Because this policy is applicable throughout the State, it was not possible to provide for a lesser standard or an exemption for school districts and BOCES in rural areas.

5. RURAL AREA PARTICIPATION:

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

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

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

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment creates an additional English Language Learner (ELL) specific pathway to graduation for qualifying students by allowing ELLs who enter the United States in 9th grade or above in the 2010-11 school year and thereafter to graduate with a Local Diploma if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. As a result, the Department determined that it would be beneficial to consider the proposed pathway to graduation for qualifying ELLs who enter United States schools in 9th grade or above.

Commissioners Regulations Part 100 currently allows for all students, ELLs and non-ELLs, to apply for the Local Diploma via appeal if they: Score 65+ on three Regents exams; AND Score 62-64 on two Regents exams. In addition, if these rules are adopted, late arriving ELLs who enter United States schools for the first time in grade nine or above in the 2010-11 school year and thereafter would be able to use the appeal process to meet the graduation assessment requirement in English Language Arts once they take the examination at least two times and score at least 55 on the examination.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The proposed amendment will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact, or a positive impact, on jobs or employment op-

portunities, 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

New York State Common Core Learning Standards (CCLS)

I.D. No. EDU-44-14-00019-A

Filing No. 30

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

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

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

Subject: New York State Common Core Learning Standards (CCLS).

Purpose: To provide additional opportunities for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2015, June 2015 and August 2015 test administrations.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. EDU-44-14-00019-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on November 5, 2014, the State Education Department received one comment on the proposed rule. The comment expressed support for the proposed rule and stated that students and educators alike need options before using the Common Core Learning Standards (English Language Arts) Assessment as it is the only method of evaluation for both students and educators. No response is necessary as the comment is supportive.

NOTICE OF ADOPTION

Duration of Competition in High School Athletics

I.D. No. EDU-44-14-00024-A

Filing No. 37

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Amendment of section 135.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 803(not subdivided), 3204(2) and (3)

Subject: Duration of competition in high school athletics.

Purpose: Clarifies when a student's eligibility for senior high school athletic competition may be extended for illness or accident.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. EDU-44-14-00024-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Pathways to Graduation

I.D. No. EDU-44-14-00025-A

Filing No. 31

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Amendment of sections 100.2 and 100.5 of Title 8 NYCRR.

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

Subject: Pathways to Graduation.

Purpose: To establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs, and to prescribe new unit of credit and examination requirements for social studies.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. EDU-44-14-00025-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on November 5, 2014, the State Education Department received the following substantive comments:

Multiple Pathways Proposal

1. COMMENT:

Support is expressed for Career and Technical Education (CTE) Pathways, but concern is also expressed that career readiness is not evident in other pathways. Consideration should be made for all pathways to have components similar to the requirements within the CTE program approval process and to begin pathway options in middle school.

DEPARTMENT RESPONSE:

The proposed CTE pathway includes career readiness components. Specific details being considered for the other proposed pathways are not yet available. It is anticipated that the Regents may consider potential amendments to regulations pertaining to students enrolled in Pathways programs.

2. COMMENT:

Supports both the development of CTE and other alternative pathways and the changes to the social studies course requirements for graduation and the Global Studies Regents exam, but urges the Department to make sure that any plan for multiple pathways to a diploma includes instructional and assessment options for all students.

DEPARTMENT RESPONSE:

The current proposal is for all students. It is expected that students pursuing this option will need instruction in the pathway to be prepared for a pathway assessment. Assessment options must be determined locally on an individual pathway basis as they are implemented.

3. COMMENT:

Support expressed for Arts Pathway.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

4. COMMENT:

Support expressed for Multiple Pathways and Special Services Aid to support pathways expansion in New York City.

DEPARTMENT RESPONSE:

The Board of Regents supports State funding for pathways expansion in its 2015 State legislative priorities <http://www.regents.nysed.gov/meetings/2014/October2014/1014p12d5.pdf>.

5. COMMENT:

Support expressed for Pathways and a 3 + 2 option, but encouraged expanding the technical assessment list.

DEPARTMENT RESPONSE:

The 3 + 2 option was discussed by the Board of Regents but is beyond the scope of the proposed rulemaking. The Department is currently considering expansion of the list of approved technical assessments.

6. COMMENT:

Concern is expressed that the 4 + 1 model will not sufficiently increase access to graduation for the 25% of students who are not currently graduating. The Board of Regents and New York State Education Department are strongly encouraged to make access to these instructional pathways integral to the development of the new model and to ensure that all students have the opportunities to benefit from them.

DEPARTMENT RESPONSE:

The Department is working with school districts and institutions to build capacity to ensure students receive adequate preparation to take advantage of rigorous pathways. In addition, the Regents 2015-2016 State Aid Proposal requests additional funding to help expand access to and support multiple pathways for all students.

7. COMMENT:

Commenter questions whether Pathways proposal is for all students.

DEPARTMENT RESPONSE:

As described in the October 2014 Board of Regents Multiple Pathways proposal, <http://www.regents.nysed.gov/meetings/2014/October2014/1014bra4.pdf>, pathway and assessment options are intended for all students.

Pathways Assessments and Graduation Requirements

8. COMMENT:

General support expressed for Multiple Pathways, but the Department should consider other assessments and expand the list of approved technical assessments.

DEPARTMENT RESPONSE:

The Department is currently reviewing additional alternative assessments for the 4 + 1 option, including comparable technical assessments.

9. COMMENT:

The 13 technical assessments approved for the pathways assessment 4 + 1 option only represent 9 of the 16 Career Cluster areas recognized nationally. Questions if the other career areas will be represented in the future.

DEPARTMENT RESPONSE:

The original approved technical assessments represent an initial effort intended to support the continued efforts of local school districts and BOCES to build high quality CTE pathway programs aligned to graduation requirements. The Department is currently considering expansion of the list of approved technical assessments.

10. COMMENT:

Reduce the number of exit exams required to graduate from 5 to 3, develop a pathway that allows all students to demonstrate their knowledge and skills through State-developed and/or approved performance-based assessments in lieu of each required Regents exam. Build more flexibility into the current system by expanding access to the appeals process for all students.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. The proposed regulations are intended to update the regulations pertaining to programs and services found in Commissioner's Regulations § § 100.2 and 100.5. It is anticipated that the Regents may consider at a future time potential amendments to regulations pertaining to students enrolled in Pathways programs.

11. COMMENT:

Consider a "grandfather" clause to allow all students previously failing Global to use assessment substitution option and allow low pass score (45) for SWD in pathways assessment option.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. The proposed regulations are intended to update the regulations pertaining to programs and services found in Commissioner's Regulations § § 100.2 and 100.5. It is anticipated that the Regents may consider at a future time potential amendments to regulations pertaining to students enrolled in Pathways programs.

12. COMMENT:

Commenters question elimination of one required Social Studies (SS) Regents exam and recommend delay of 4 + 1 option to 2018 after revision to SS exam. Commenters also encourage Board of Regents to support students taking both SS exams then choose a pathway. Commenters ask if pathways will change requirements for Advanced Diploma.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

13. COMMENT:

Commenter suggests the use of high school exit exams as a barrier to graduation needs to be fundamentally rethought, and recommends the Board of Regents form a working group to recommend flexible, multiple-measure graduation criteria.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. The proposed regulations are intended to update the regulations pertaining to programs and services found in Commissioner's Regulations § § 100.2 and 100.5. It is anticipated that the Regents may consider at a future time potential amendments to regulations pertaining to students enrolled in Pathways programs.

14. COMMENT:

Commenter is against all standardized assessment.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. The proposed regulations are intended to update the provisions pertaining to programs and services found in Commissioner's Regulations § § 100.2 and 100.5.

Requirements for Pathways

15. COMMENT:

General support expressed for CTE Pathway, but school districts must be stopped from imposing "caps" on the number of students that are allowed to participate in CTE programs.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. However, the Department is committed to working with school districts towards ensuring that all students have access to prepare them for college, career and citizenship readiness.

16. COMMENT:

Support expressed for Multiple Pathways, and financial education and work-based learning experiences should be required for all students.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

17. COMMENT:

Require all students to take Career and Financial Management (CFM) course.

DEPARTMENT RESPONSE:

CFM course content is currently a requirement of all CTE approved programs. The current proposal indicates CTE pathways must contain approved programs. No details are available for the other proposed pathways at this time. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

18. COMMENT:

Require increased role of academic teachers in CTE programs as well as state funding to support program expansion.

DEPARTMENT RESPONSE:

Regulations currently allow participation of academic teachers in CTE programs based on program content and teacher certification. The Board of Regents supports State funding for pathways in its 2015 State legislative priorities <http://www.regents.nysed.gov/meetings/2014/October2014/1014p12d5.pdf>.

19. COMMENT:

More information needed on pathways for all stakeholders including students and parents. Additionally SED must provide guidance to the field.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

20. COMMENT:

STEM pathway must address engineering and technology not just math and science.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. Curriculum requirements for pathways are determined at the local level. Pathway assessments options will be considered for engineering and technology if appropriate and comparably rigorous assessment options exist.

21. COMMENT:

Review existing CTE teacher certification pathways and create a new pathway specifically for business/industry persons.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. However, it is anticipated that the Department may review existing CTE certification options and may recommend changes to CTE teacher certification in the future.

22. COMMENT:

Requests additional guidance to:

(i) Address the reality of lost instructional time for social studies at the elementary level.

(ii) Study the impact that eliminating the state assessments in Grade 5 and Grade 8 has had on student achievement by high school.

(iii) Revise Regents Examinations to truly reflect historical thinking practices as described in the Social Studies K-12 Framework and the C3 Inquiry Arc.

(iv) Clarify the description of “multiple pathways”, since it has generated extensive confusion among the field.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

NOTICE OF ADOPTION

Appeals Process on Regents Exams Passing Score for English Language Learners (ELLs)

I.D. No. EDU-44-14-00026-A

Filing No. 35

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Amendment of section 100.5(d)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 215(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided), 2117(1), 3204(2), (2-a), (3) and (6)

Subject: Appeals process on Regents exams passing score for English Language Learners (ELLs).

Purpose: To allow ELLs who enter the United States in 9th grade or above in the 2010-11 school year and thereafter to graduate with a Local Diploma if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. EDU-44-14-00026-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on November 5, 2014, the State Education Department received the following comments:

1. COMMENT:

Recommends that the proposed amendment apply to all English Language Learners (ELLs), regardless of the date they arrived in the United States. In particular, recommends that the proposed amendment apply to ELLs who arrive in the United States during middle school, because research suggests that students often require more than four years to develop English language skills. Also, many new immigrant students arrive late in the school year, in May or June, and ELLs who arrive late in their eighth grade year should not be excluded.

DEPARTMENT RESPONSE:

The proposed amendment is targeted specifically to those late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English. Extensive discussion with stakeholders suggests that this specific category of ELLs is able to benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other

students who may earn a diploma through the appeal process. While we recognize that there will be immigrant students who arrive shortly before the cut-off for eligibility to receive a local diploma through the appeals process, that would be true no matter where the line is drawn, and those students will have the benefit of a full year of ninth grade instruction.

2. COMMENT:

Recommends that the proposed amendment apply to all ELLs who entered high school in 2009 and thereafter, so that current fifth and sixth-year ELLs may benefit from the proposal.

DEPARTMENT RESPONSE:

The Department will consider this recommendation for future rulemaking and guidance.

3. COMMENT:

Recommends the expansion of access to the appeal process for all students.

DEPARTMENT RESPONSE:

As described above, the proposed amendment is targeted specifically to late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English. Extensive discussion with stakeholders suggests that this specific category of ELLs is able to benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process.

4. COMMENT:

Recommends revising the proposed amendment to make clear that it is available to all ELLs, including those who meet graduation assessment requirements through any available alternative pathway (such as, performance based and other alternative assessments). As currently drafted, the proposed amendment could be interpreted as applying only to students who take all five Regents Exams.

DEPARTMENT RESPONSE:

The intent of the proposed amendment is not to exclude those ELLs who meet graduation assessment requirements through available alternative pathways. The Department will issue guidance to clarify that ELLs who satisfy one or more graduation requirement via an alternate pathway and who satisfy all other requirements of the proposed amendment may also earn a Local Diploma via appeal.

5. COMMENT:

Recommends reduction of the attendance requirement to qualify for the appeal procedure set forth in the proposed amendment to 90 percent, because a 95 percent attendance rate is unduly onerous and does not take into account illness or other life circumstances that may prevent a student's attendance at school.

DEPARTMENT RESPONSE:

The requirement of a 95% attendance rate conforms to existing requirements for all students to access the appeal process. The intent of the proposed amendment is merely to make a Local Diploma via appeal available to qualifying late arriving ELLs, not to change the underlying requirements of the appeal process for any student.

6. COMMENT:

Recommends that days missed for mandated immigration court appearances are not counted toward the 95 percent attendance requirement.

DEPARTMENT RESPONSE:

Commissioner's Regulation section 100.4(i) directs each school district to adopt a comprehensive attendance policy that, among other things, specifies which pupil absences, tardiness, and extended departures shall be excused and unexcused. It is not the intent of the proposed amendment to change the requirements of Commissioner's Regulation section 100.4(i) by dictating what kinds of absences are excused and what kinds of absences are unexcused.

7. COMMENT:

Recommends reduction of the number of required attempts to score a 65 or above on the Regents Exam in English from two to one, because requiring two attempts creates incentives for students to spend time and resources on test preparation rather than learning new material and students may feel discouraged and drop out altogether after the first attempt.

DEPARTMENT RESPONSE:

The requirement of two attempts to score a 65 or above on the Regents Exam in English conforms to existing requirements for all students to access the appeal process. The intent of the proposed amendment is merely to make a Local Diploma via appeal available to qualifying late arriving ELLs, not to change the underlying requirements of the appeal process for any student.

8. COMMENT:

Making available the Local Diploma via appeal does not go far enough in establishing meaningful alternatives for students who cannot adequately demonstrate their knowledge and skills on standardized tests, but who can demonstrate proficiency via other rigorous forms of assessment. Recommends reducing the number of exit exams required to graduate from five to three.

DEPARTMENT RESPONSE:

This comment is beyond the scope of the proposed amendment. The intent of the proposed amendment is to make a Local Diploma via appeal available to qualifying late arriving ELLs, not to change the underlying graduation requirements by reducing the total number of mandated exit exams from five to three.

9. COMMENT:

Recommends development of a pathway that allows all students to demonstrate their knowledge and skills through a State-developed and/or approved performance-based assessment in lieu of each required exit exam.

DEPARTMENT RESPONSE:

This comment is beyond the scope of the proposed amendment. The intent of the proposed amendment is to make a Local Diploma via appeal available to qualifying late arriving ELLs, not to change the underlying graduation requirements by developing additional pathways for graduation such as performance-based assessments in lieu of required exit exams. However, the Department will take this recommendation under advisement for possible future rulemaking.

10. COMMENT:

Opposes the proposed amendment, and recommends that the Regents Exam in English should remain a requirement for all ELLs, except those who are classified as special education and unable to achieve proficiency in their native language. Commenter argues that the proposed amendment waters down the use of English as a national language and sets a precedent for bilingual education, which is discriminatory toward speakers of all other non-English languages.

DEPARTMENT RESPONSE:

The Department disagrees. The Regents Exam in English remains a graduation requirement for ELLs, and the proposed amendment merely extends to qualifying late arriving ELLs the ability to earn a Local Diploma via appeal. Furthermore, bilingual education is not limited to any particular language and is not discriminatory toward any speakers of non-English languages. In fact, under Section 154-1.3(g) of the Commissioner's Regulations, school districts with 20 or more ELL students with the same native language are legally mandated to provide bilingual education in all languages in which that population threshold is met.

NOTICE OF ADOPTION

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

I.D. No. EDU-44-14-00027-A

Filing No. 33

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Amendment of sections 100.4 and 100.18 of Title 8 NYCRR.

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

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

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

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. EDU-44-14-00027-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Use of Department Facilities in the Cultural Education Center

I.D. No. EDU-04-15-00007-P

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

Proposed Action: Amendment of section 230.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (6) and (20)

Subject: Use of Department Facilities in the Cultural Education Center.

Purpose: To prescribe standards for the use of Cultural Education Center facilities.

Text of proposed rule: Section 230.2 of the Regulations of the Commissioner of Education is amended, effective April 29, 2015, as follows:

§ 230.2 Use of [the museum] *Department* facilities in the Cultural Education Center.

(a) When not required to serve the program needs of the Education Department, the facilities of the [New York State Museum in the] *Office of Cultural Education in the Cultural Education Center*, including but not limited to the student center, meeting rooms and [auditorium] *auditoriums*, may be made available for general public and private use in accordance with the limitations and requirements of this section.

(b) The [museum] facilities may not be used for the presentation of any programs that are religious, political or commercial, or at which attendance is exclusive, except that attendance at meetings under the control of institutions in the University of the State of New York may be exclusive.

(c) Fees. Each person, association, organization or corporation permitted the use of the [museum] facilities shall pay for all costs resulting from such use. Each such person, association, organization or corporation, except a State agency, shall provide liability and property damage insurance.

(d) The Education Department reserves the right to require the use of as many building guards for an event as it deems necessary to provide adequate audience safety.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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 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 305(6), in applicable part, vests in the Commissioner responsibility for property in charge of the Regents and for the proper administration of the various divisions of the Education Department.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to clarify requirements governing the availability of Cultural Education Center facilities for general public and private use.

3. NEEDS AND BENEFITS:

Section 230.2 sets forth requirements governing the availability of Cultural Education Center (CEC) facilities for general public and private use, when not required to serve the program needs of the State Education Department. The section currently refers only to the use of museum facilities within the CEC. The proposed amendment needs to be updated to reflect current availability and use practices relating to all facilities in the CEC.

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. The proposed amendment merely updates the requirements governing the availability of Cultural Education Center facilities for general public and private use to include all CEC facilities, and not only museum facilities.

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. The proposed amendment merely updates the requirements governing the availability of Cultural Education Center facilities for general public and private use to include all CEC facilities, and not only museum facilities.

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork or recordkeeping requirements. The proposed amendment merely updates the requirements governing the availability of Cultural Education Center facilities for general public and private use to include all CEC facilities, and not only museum facilities.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment merely updates the requirements governing the availability of Cultural Education Center facilities for general public and private use to include all CEC facilities, and not only museum facilities. 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:

The proposed amendment will not impose any compliance requirements or costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment merely updates the regulation to reflect current practices concerning the requirements governing the availability of Cultural Education Center facilities for general public and private use, to include all CEC facilities and not only museum facilities. Therefore, there is no need to state an estimated time for regulated parties to achieve compliance with the proposed amendment.

Regulatory Flexibility Analysis

The proposed amendment relates to requirements governing the availability of Cultural Education Center facilities for general public and private use. The Cultural Education Center is located in the Empire State Plaza, Albany, NY.

The proposed amendment will not impose any compliance requirements or costs, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative 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

The proposed amendment relates to requirements governing the availability of Cultural Education Center facilities for general public and private use. The Cultural Education Center is located in the Empire State Plaza, Albany, NY.

The proposed amendment will not have an adverse impact on rural areas or impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect rural areas or public or private entities in rural areas, no further measures were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates to requirements governing the availability of Cultural Education Center facilities for general public and private use. The Cultural Education Center is located in the Empire State Plaza, Albany, NY.

The proposed amendment 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.

State Board of Elections

EMERGENCY RULE MAKING

Independent Expenditure Disclosure

I.D. No. SBE-04-15-00003-E

Filing No. 21

Filing Date: 2015-01-08

Effective Date: 2015-01-08

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

Action taken: Repeal of section 6200.10; and addition of new section 6200.10 to Title 9 NYCRR.

Statutory authority: L. 2014, ch. 55

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

Specific reasons underlying the finding of necessity: The Commissioners determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. This amendment is adopted as an emergency measure because time is of the essence and to adopt the regulation in the normal course of business would be contrary to the public interest as a necessary change in the agency's regulations would not be effective for the June 1, 2014 effective date.

The General Government Budget Bill (Chapter 55 of the laws of 2014) created the new independent expenditure disclosure requirements.

Subject: Independent Expenditure Disclosure.

Purpose: The purpose of this law is to set forth the requirements for Independent Expenditure Committees to disclose financial activity.

Substance of emergency rule: Chapter 55 of the Laws of 2014 increased the disclosure and reporting requirements for independent expenditure committees. The purpose of this regulation is to set forth the requirements to achieve compliance of reporting and disclosure requirements by Independent Expenditure Committees.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 7, 2015.

Text of rule and any required statements and analyses may be obtained from: Cheryl Couser, New York State Board of Elections, 40 N. Pearl Street, Suite 5, Albany, NY 12207, (518) 474-2063, email: Cheryl.Couser@elections.ny.gov

Regulatory Impact Statement

1. Statutory authority: Chapter 55 of the Laws of 2014.

2. Legislative objectives: The SFY 2014-2015 New York State Budget set forth new requirements for the increased disclosure of Independent Expenditure activity.

3. Needs and benefits: The New York State Election Law mandates how financial activity, including independent expenditures, is to be disclosed. Article 14 of the Election law sets forth the requirement that independent expenditures be disclosed through the filing of campaign financial disclosure reports.

Chapter 55 of the Laws of 2014 set forth definitions on what an independent expenditure is and how they are to be disclosed in order to promote public transparency of political activity. The effective date of this law was June 1, 2014.

4. Costs: Regulated parties should incur minimal costs for additional compliance requirements. Those entities that engage in certain independent expenditure activities have been required to register and report with the New York State Board of Elections. Chapter 55 of the Laws of 2014 requires an increased level of record keeping and reporting.

5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This rule requires Committees to make additional electronic disclosures for any contribution received over \$1,000 or any expenditure made over \$5,000 within certain set time frames. This could include 24 hour disclosures of activity or weekly disclosure of such activity.

In addition, for any Independent Expenditure communication which cost more than \$1,000 in the aggregate are required to include attribution on the communication. Such attribution would include the name of the

person who paid for the Independent Expenditure and a statement that the communication was not expressly authorized or requested by any candidate or by any candidate's political committee or its agents.

Lastly, a copy of all political communications paid for by an Independent Expenditure Committee must be submitted to the NYSBOE.

7. Duplication: The Federal Elections Commission and the New York City Campaign Finance Board have other legal requirements that may duplicate, overlap or conflict with the rule. At the time of publication, the Board has not undertaken efforts to resolve or minimize the impact of any duplication, overlap or conflict on regulated persons, including but not limited to seeking waivers or amendments of or exemptions from such other rules or legal requirements, or entering into a memorandum of understanding or other agreement regarding same.

8. Alternatives: As the provisions of this law were enacted as part of the SFY 2014-15 budget, the Board did not consider alternative proposals. However, the Board did request public comment on the proposed rule on its website since May 2014. Public comment is still being accepted.

9. Federal standards: Not applicable.

10. Compliance schedule: This provision of law was effective June 1, 2014. NYSBOE provided several webinars in May and provided guidance materials via our website to enable regulated persons to achieve compliance with the rule.

Regulatory Flexibility Analysis

1. Effect of rule: There is no impact on local governments due to this rule. This rule will have a minimal impact on small businesses. Should a small business engage in independent expenditures, they would already be required to register and report activity to the Board.

2. Compliance requirements: If a small business were to engage in independent expenditures, they would have to register with the NYSBOE as a political committee. In addition, they would have to maintain books of related financial activity and make required disclosures to the Board of such activity. This rule does not impact local government.

3. Professional services: A small business that engages in independent expenditures may acquire accounting services to maintain and report activity to comply with this rule.

4. Compliance costs: It is unclear as to the initial capital costs that will be incurred by a regulated business or industry to comply with the rule. A regulated business may hire a staff accountant or services to comply.

5. Economic and technological feasibility: Our assessment of the economic and technological feasibility of compliance with such rule by small businesses and local governments would be that a computer is necessary to make required disclosures.

6. Minimizing adverse impact: The rule was not designed to minimize any adverse economic impact the rule may have on small businesses. There is no impact on local governments.

7. Small business and local government participation: Although this is an emergency rule, the NYSBOE has solicited and will continue to receive and consider public comment. This would include comments that may suggest alternatives to minimize the impact on small businesses.

8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: The rule text does not include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement, as the underlying statute, Chapter 55 of the Laws of 2014, did not authorize such a cure period.

9. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule has a statewide impact. Any entity which engages in independent expenditure activity, over a \$1,000 threshold, will have to register and report to the NYSBOE. This rule does not impact local government.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Entities that engage in independent expenditures activity will have to open and maintain a bank account, maintain books for a period of five years, and make a variety of disclosure reports depending on their activity. Disclosure reports range from 24 hour disclosures, weekly disclosures, periodic and election cycle disclosure reports, as applicable. Accounting services may be needed to comply although many entities will absorb this function in house. A computer is needed to comply with disclosure requirements of this rule.

3. Costs: Undetermined.

4. Minimizing adverse impact: This rule was not designed to minimize any adverse impact on rural areas, however, only entities that engage in such activity are captured.

5. Rural area participation: NYSBOE has solicited and is accepting public comment on for impacted entities to participate in the rule making process to minimize cost or complexity.

6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not Applicable.

Job Impact Statement

1. Nature of impact: This rule should have a minimal impact on jobs as it amends existing disclosure requirements for independent expenditures by political committees. Prior to this rule, Committees have had to register and disclose independent expenditure activity with the Board.

2. Categories and numbers affected: This rule will impact Committees which engage in independent expenditure activity. It may create employment opportunities due to increased recording keeping and reporting requirements. Approximate numbers of employment opportunities have not been determined.

3. Regions of adverse impact: This rule has a statewide impact but would not have an adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact: The Board has not taken any measures to minimize adverse impacts on existing jobs or to promote the development of new employment opportunities. The Board has not determined that this rule would have an adverse impact on jobs.

5. (IF APPLICABLE) Self-employment opportunities: Not applicable.

6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

Assessment of Public Comment

The New York State Board of Elections has received public comment from the following:

- Citizen's Union
- Family Planning Advocates of New York State
- League of Women Voters
- Anonymous Individual

Department of Environmental Conservation

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

Regulations Governing the Recreational Harvest of Winter Flounder

I.D. No. ENV-04-15-00006-P

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

Proposed Action: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-c

Subject: Regulations governing the recreational harvest of winter flounder.

Purpose: Extend the recreational winter flounder fishing open season from April 1 - May 30 to March 1 - December 31.

Text of proposed rule: Existing subdivision 40.1 (f) of 6 NYCRR is amended to read as follows:

Species Striped bass through Bluefish remain the same. Species Winter flounder is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Winter flounder	[April 1 – May 30] <i>March 1 – Dec. 31</i>	12" TL	2

Species Scup (porgy) through Oyster toadfish remain the same.

Text of proposed rule and any required statements and analyses may be obtained from: Stephen Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0435, email: steve.heins@dec.ny.gov

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

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

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) sections 11-0303, 13-0105, and 13-0340-c authorize the Department of Environmental Conservation

(DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for winter flounder.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

These regulations are necessary for New York to maximize winter flounder fishing opportunities for its marine recreational anglers while remaining in compliance with the Interstate Fishery Management Plan (FMP) adopted by the Atlantic States Marine Fisheries Commission (ASMFC). The proposed rule will extend the current 60 day open season (April 1 – May 30) to 306 days (March 1 – December 31) without altering the current 12 inch minimum size limit or the 2 fish possession limit. This regulatory change will provide New York marine recreational anglers with similar access to winter flounder as anglers in NY's neighboring states of Rhode Island, Connecticut and New Jersey. The proposed season will provide additional fishing opportunities during periods of the year when there are few other species to fish for. It is hoped that these relaxed regulations will increase interest and fishing activity, resulting in economic benefits to a number of different types of associated businesses.

4. Costs:

There are no new costs to state and local governments from this action. The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

5. Local government mandates:

None.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

A moratorium or other more restrictive measures on the harvest of winter flounder: Some stakeholders have said that the winter flounder fishery should be closed or more restrictive than it is currently managed to eliminate fishing mortality on these fish. However, neighboring states have already decided to extend the winter flounder season. This alternative was rejected because such a closure would deny New York State anglers fishing opportunities made available to anglers in neighboring states and because a closure may adversely impact the incomes of New York State recreational fishery businesses.

"No action" alternative or status quo: Under this alternative New York State winter flounder regulations would remain at the current season of April 1 through May 30. This alternative is not projected to impact fishing mortality in any manner. This alternative was rejected because the current winter flounder season is shorter than the winter flounder seasons set by neighboring states. New York State anglers would be denied fishing opportunities made available to anglers in neighboring states.

Extend the season to shorter period than the proposed March through December: Under the ASMFC season extension, New York State can extend its fishing season from 60 days up to 306 days, between the dates March 1 and December 31. A proposed season shorter than the proposed 306 day season allowed by ASMFC could provide some conservation benefit to the winter flounder stock, particularly those sub-populations that are resident in New York's bays. For example, the season could be closed during times when winter flounder aggregate in June and November-December. As above, this alternative was rejected because such a season is shorter than the winter flounder seasons set by neighboring states.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs.

10. Compliance schedule:

The proposed rule will extend the recreational fishing season for winter flounder. Regulated persons will be notified by mail, press release, and DEC's website of the changes to the winter flounder regulations. Regulated persons will be able to achieve compliance with the rule as soon as it is adopted and in effect.

Regulatory Flexibility Analysis

1. Effect of rule:

The Atlantic States Marine Fisheries Commission (ASMFC) adopted a significantly expanded recreational fishing season for winter flounder in February 2014. New York State can adopt this 306 day season (March 1-December 31) or one more restrictive. The current regulations in place are far more restrictive with only a 60-day fishing season (April 1-May 30); this proposed rule represents a considerable relaxation of current

regulations and increased opportunity for marine recreational anglers and associated businesses (party and charter [for-hire] boats, bait and tackle sales, gas docks, and marinas). Neither the current minimum size limit of 12 inches nor the possession limit of 2 fish will change. The adoption of the proposed rule will provide New York State recreational anglers and fishing associated businesses with parity with those in neighboring states where the longer season has already been adopted.

2. Compliance requirements:

The rule does not impose any reporting or recordkeeping requirements for small businesses or local governments.

3. Professional services:

None.

4. Compliance costs:

Associated businesses may experience some economic benefits. Increasing fishing pressure on already depressed stocks of inshore winter flounder may impact their recovery and bear a long term cost for those that wish to fish on them.

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to optimize opportunities for its recreational fishing industry and recreational anglers while maintaining compliance with the ASMFC fishery management plan (FMP) for winter flounder. The proposed rule is a significant relaxation of current regulations and should not result in any immediate negative impacts to small businesses.

7. Small business and local government participation:

The department received recommendations from the Marine Resource Advisory Council, comprised of representatives from recreational and commercial fishing interests, although no formal quorum was present on the number of different occasions that this proposed rule was discussed. Public opinion was also expressed at these meetings. The majority of Councilors and the public were in favor of extending the recreational winter flounder fishing season, but this sentiment was not unanimous.

8. Cure period or other opportunity for ameliorative action:

Although the proposed rule will extend the recreational fishing season for winter flounder, the minimum size limit and possession limit will remain in effect, as management measures to constrain the impacts of fishing on the winter flounder stock. The text of the rule does not include a cure period or other opportunity for ameliorative action (the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement). Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the winter flounder resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

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. Winter flounder fisheries 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 ASMFC adopted a significantly expanded recreational fishing season for winter flounder in February 2014 and New York State has the option to adopt this 306 day season (March 1-December 31) or one more restrictive. The current regulations in place are far more restrictive at only 60 days (April 1-May 30) so this proposed rule represents a considerable relaxation of current regulations and increased opportunity for marine recreational anglers and associated businesses (for-hire vessels, bait and tackle sales, gas docks, marinas). Neither the current minimum size limit of 12 inches nor the possession limit of 2 fish will change. The adoption of the proposed rule will provide New York State anglers and recreational fishing businesses parity with anglers and fishing businesses in neighboring states where the longer season has already been adopted. Winter flounder was at one time the most popular marine recreational fishery in New York State. Its popularity has declined as the population decreased and regulations became more restrictive.

2. Categories and numbers affected:

In 2013, there were 475 licensed party and charter businesses in New

York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. According to the American Sportfishing Association, in 2011 New York had an estimated 800,811 marine recreational anglers that spent \$1,194,493,042 on saltwater fishing, generating \$144,539,079 in state and local tax revenue. In 2014, over the 60 day open season, New York marine recreational anglers only made 22,378 trips targeting winter flounder. This is in stark contrast to the almost 2 million directed trips per year in the mid 1980's when fish were more abundant, the season was year around, and there was no restrictions on the possession limit.

3. Regions of adverse impact:

The proposed rule is less restrictive than those currently in place and it is not anticipated that the rule will have adverse impacts on jobs in the Marine and Coastal District of New York.

4. Minimizing adverse impact:

The proposed rule is less restrictive than those currently in place and it is not anticipated that the rule will have adverse impacts on jobs in the Marine and Coastal District of New York. Long term consequences to the inshore stock from increased fishing pressure is difficult to predict but could ultimately effect the livelihoods of those that depend upon winter flounder.

Department of Financial Services

EMERGENCY RULE MAKING

Public Retirement Systems

I.D. No. DFS-04-15-00001-E

Filing No. 20

Filing Date: 2015-01-07

Effective Date: 2015-01-07

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 85) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 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 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment of the assets of the New York State Common Retirement Fund ("Fund"), 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 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.

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, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, February 7, 2012, May 7, 2012, August 3, 2012, October 31, 2012, January 28, 2013, April 26, 2013, July 24, 2013, October 21, 2013, January 17, 2014, April 16, 2014, July 14, 2014, and October 10, 2014. The Department is currently working with the Governor's Office to make additional revisions to the regulation.

Subject: Public Retirement Systems.

Purpose: To ban the use of placement agents by investment advisors engaged by the State employees' retirement systems.

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 dif-

ferent 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. Administrative 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 April 6, 2015.

Text of rule and any required statements and analyses may be obtained from: Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

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

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

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 Insurance Law sections 310, 311 and 312. 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 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.

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

Insurance Law 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: Insurance Law section 314 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 rule, 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 Insurance Law 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 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of 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 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 rule 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 rule. There are no costs to the 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 rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

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

7. Duplication: This rule 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. The proposed rule was published in the *State Register* on March 17, 2010. 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 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 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 rule 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 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of 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 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 Insurance 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 rule 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 rule. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act.

This rule 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 rule 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 rule is also directed to placement agents, who as a result of this rule, 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 rule 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 rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultants 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 rule. There are no costs to the Department of Financial Services 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(10) will be affected by this rule. The rule 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 rule 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 rule 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 Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The rule 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Life Insurance Reserves

I.D. No. DFS-04-15-00005-P

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

Proposed Action: Amendment of Parts 98 (Regulation 147) and 100 (Regulation 179) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240 and 4517

Subject: Life insurance reserves.

Purpose: To modernize the current regulatory scheme with respect to universal life insurance with secondary guarantee reserves.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov>): Sections 98.4(b)(5)(ii), 98.4(b)(5)(iii), 98.4(b)(5)(vii)(b), 98.7(b)(1)(iv), and 98.7(b)(1)(v) are amended to allow for the recognition of mortality improvement beyond the valuation date for universal life policies that guarantee that coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement, issued on or after January 1, 2015.

Section 98.9(c)(2)(viii)(b)(2) is amended by renumbering subclause (2) as item (i) and adding a new item (ii). Item (ii) provides the lapse rates that may be used for policies issued on or after January 1, 2015.

Section 98.9(c)(2)(viii)(e) is amended to refer to the lapse rates in section 98.9(c)(2)(viii)(b)(2)(i) for policies issued on or after January 1, 2007 and prior to January 1, 2015 and to refer to the rates in section 98.9(c)(2)(viii)(b)(2)(ii) for policies issued on or after January 1, 2015.

Section 100.1 is amended by adding a new subdivision (c), which recognizes and permits the use of mortality improvement scale LT for universal life policies that guarantee that coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement.

Section 100.2 is amended by changing the applicability section and clarifying that new section 100.12 applies only to universal life policies that guarantee that coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement.

Section 100.3(o) is amended to reflect the mortality adjustments described in section 100.12.

Sections 100.6(a)(2), 100.6(a)(3), 100.6(a)(7), and 100.6(a)(8) are amended to allow for the recognition of mortality improvement beyond the valuation date for universal life policies that guarantee that coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement, issued on or after January 1, 2015.

Section 100.12 ("Severability") is re-numbered as section 100.13, and a new section 100.12 ("Universal Life Policies That Guarantee That Coverage Will Remain In Force As Long As The Accumulation Of Premiums Paid Satisfies The Secondary Guarantee Requirement Mortality Improvement") is added to provide the mortality improvement factors and formulas for universal life policies that guarantee that coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement, and to include a numerical example for applying the mortality improvement factors and formulas.

Text of proposed rule and any required statements and analyses may be obtained from: Amanda Fenwick, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257, (518) 474-7929, email: amanda.fenwick@dfs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate the Sixth Amendment to Insurance Regulation 147 (11 NYCRR 98) and Fourth Amendment to Insurance Regulation 179 (11 NYCRR 100) derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240, and 4517 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent of Financial Services ("Superintendent") and designates the Superintendent as the head of the Department of Financial Services ("Department").

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

Insurance Law section 1304 requires insurers to maintain reserves for life insurance policies and certificates according to prescribed tables of mortality and rates of interest.

Insurance Law section 1308 sets forth the parameters for reinsuring risks and policy liabilities, and the effect that reinsurance will have on an insurer's reserves.

Insurance Law section 4217 requires the Superintendent to annually value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding policies and contracts of every life insurer doing business in New York. Insurance Law section 4217(a)(1) specifies that the Superintendent may certify the amount of any such reserves, specifying the mortality table or tables, and rate or rates of interest and methods used in the calculation of reserves.

Insurance Law section 4217(c)(2)(A)(iii) permits the use of, as a minimum standard of valuation for life insurance policies, any ordinary mortality table adopted by the National Association of Insurance Commissioners ("NAIC") after 1980 and approved by the Superintendent.

Insurance Law section 4217(c)(2)(A)(iv) authorizes the Superintendent to adopt any mortality table or modifications of any table for any specific class of risk.

Section 4217(c)(6)(D) permits the Superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions of section 4217 to such policies and contracts as the Superintendent deems appropriate.

Section 4217(c)(9) requires that, in the case of any plan of life insurance that provides for a future premium determination, the amounts of which are to be determined by the insurance company based on estimates of future experience, or in the case of any plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in section 4217(c)(6) and section 4218, the reserves held for a plan must be appropriate in relation to the benefits and pattern of premiums for that plan and must be computed by a method that is consistent with the principles of sections 4217(c)(6) and 4218, as determined by the Superintendent.

Insurance Law section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioner's reserve valuation method (as such term is defined in section 4217(c)(6)), the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioner's reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which the modified net premium exceeds the actual premium.

Insurance Law section 4221(k)(9)(B)(vi) permits, for policies of ordinary insurance, the use of any ordinary mortality table adopted by the NAIC after 1980 and approved by the Superintendent, for use in determining the minimum nonforfeiture standard.

Insurance Law section 4224(a)(1) prohibits unfair discrimination between individuals of the same class and of equal expectation of life in the amount or payment or return of premiums or the rates charged for life insurance policies.

Insurance Law section 4240(d)(6) provides that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract. Section 4240(d)(7) authorizes the Superintendent to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

Insurance Law section 4517(b)(2) provides, with respect to fraternal benefit societies, that reserves according to the commissioner's reserve valuation method for life insurance certificates that provide for a varying amount of benefits, or requiring the payment of varying premiums, shall be calculated by a method consistent with the principles of subsection (b). Section 4517(c)(2) requires fraternal benefit societies to comply with the minimum valuation standards of Insurance Law section 4217 for life insurance certificates issued on or after January 1, 1980.

2. Legislative objectives: Helping to ensure the continued solvency of insurers doing business in New York is one of the primary policy goals of the Insurance Law and a principal focus of the Superintendent's regulatory oversight. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies authorized to do business in New York State to hold reserve funds in amounts sufficient to meet the obligations made to policyholders. The Insurance Law prescribes the mortality tables and interest rates to be used for calculating such reserves. At the same time, an insurer benefits when it has adequate capital to use for company expansion, product innovation, and other forms of business development.

3. Needs and benefits: The Superintendent has determined that universal life with secondary guarantee insurance reserves are currently set high relative to actuarial experience due to such factors as the impact of lapsation on universal life with secondary guarantee insurance and future claims and improvement in mortality since the NAIC's last release of the CSO mortality table. Reserving has not historically included lapse as a factor in calculations because it was not relevant to traditional forms of life insurance contracts; therefore, section 4217 does not expressly include references to lapses. However, new types of policies and contracts have been developed, which were not contemplated at the time that section 4217 was written, for which lapses may be relevant in calculating their reserves. Pursuant to section 4217, the reserves held for a plan must be appropriate in relation to the benefits and pattern of premiums for that plan and must be computed by a method that is consistent with the principles of sections 4217 and 4218, as determined by the Superintendent. In accordance with the statutory authority and the directive of section 4217, the Superintendent is amending Insurance Regulations 147 and 179, as stated in the Superintendent's letter to state insurance commissioners, dated March 27, 2014 in a manner that will modernize the current regulatory scheme with respect to universal life with secondary guarantee insurance reserves.

Insurance Regulation 147 is amended to recognize mortality improvement beyond the valuation date for universal life policies that guarantee that coverage remains in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement, issued on or after January 1, 2015. Additionally, a lapse rate of two percent may be used for the first five years, followed by a rate of no more than one percent for the remaining life of the policy.

Insurance Regulation 179 is amended consistent with mortality improvement. Because insureds are generally living longer, the amendment applies a 1.0 percent mortality improvement factor to the current mortality table (2001 CSO) for up to 40 years, and applies a 0.5 percent mortality improvement factor thereafter through attained age 80. The mortality rates linearly grade from attained ages 81 through 90. These factors will apply only during the first segment. The Department anticipates that the NAIC will adopt a new mortality table in 2015, which may result in an additional update to Insurance Regulation 179.

The Department estimates that concurrent amendments to Insurance Regulations 147 and 179 will result in up to a 15 percent reduction in reserves for universal life with secondary guarantee insurance on a prospective basis.

4. Costs: Insurers and fraternal benefit societies that are authorized to do business in New York State that are impacted by these amendments may incur costs to modify existing computer software to incorporate the new mortality and lapse requirements for prospective business, as well as the testing and implementation of the changes to the software, if they choose to make these changes. However, insurers and fraternal benefit societies are not required to make the changes that are prescribed in the amendments, because not applying the changes will result in higher-than-minimum-required reserves and an insurer or fraternal benefit society may choose to hold reserves at an amount that is higher than the minimum level required.

Software modification, testing and implementation costs are estimated to be \$10,000 or less. After an insurer has modified its computer systems to comply with these amendments, only minimal additional costs should be anticipated.

The amendments are expected to result in the need for a small amount of training of Department staff. The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

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

6. Paperwork: The amendments do not alter paperwork requirements.

7. Duplication: The amendments do not duplicate any existing laws or regulations.

8. Alternatives: An alternative considered by the Superintendent was to allow company-specific assumptions that were supported by credible experience. However, this rulemaking provides a more objective and uniform floor on reserves, ensuring that reduced reserves will be held at intended levels. Another alternative considered by the Superintendent was to specify a set percentage of universal life with secondary guarantee insurance reserves resulting from the current standard. However, that method is not actuarially sound because it is not supported by a mortality table. The Department's Life Bureau reached out to a number of insurers that write universal life with secondary guarantee policies, which included discussions with the affected insurers' trade association, The Life Insurance Council of New York, prior to drafting these amendments.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: These amendments apply to policies issued on or after January 1, 2015 and will impact statements due May 15, 2015 and filed thereafter.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that the amendments to Insurance Regulations 147 and 179 will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that these rules are directed at all insurers and fraternal benefit societies that are authorized to do business in New York State, none of which comes within the definition of "small business" provided in State Administrative Procedure Act Section 102(8). The Department reviewed filed reports on examination and annual statements of authorized insurers and fraternal benefit societies and concludes that none of these entities comes within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments: These amendments do not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and fraternal benefit societies affected by the amendments to Insurance Regulations 147 and 179 do business in every county in this state, including rural areas as defined in State Administrative Procedure Act section 102(10).

2. Reporting, recordkeeping and other compliance requirements, and professional services: There are new mortality and lapse rate requirements for policies issued on or after January 1, 2015.

3. Costs: Insurers and fraternal benefit societies that are authorized to do business in New York State that are impacted by these amendments may incur costs to modify existing computer software to incorporate the new mortality and lapse requirements for prospective business, as well as the testing and implementation of the changes to the software, if they choose to make these changes. However, insurers and fraternal benefit societies are not required to make the changes that are prescribed in the proposed amendments, because not applying the changes will result in higher-than-minimum required reserves and an insurer or fraternal benefit society may choose to hold reserves at an amount that is higher than the minimum level required.

Software modification, testing and implementation costs are estimated to be \$10,000 or less. After an insurer has modified its computer systems to comply with these amendments, only minimal additional costs should be anticipated.

These amendments are expected to result in the need for a small amount of training for staff of the Department of Financial Services ("Department"). The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact: These amendments do not impose any adverse impact on rural areas.

5. Rural area participation: The Department's Life Bureau reached out to a number of insurers that would be affected by these amendments and

to the insurers' trade association, the Life Insurance Council of New York ("LICONY"), prior to drafting these amendments.

Job Impact Statement

The amendments to Insurance Regulations 147 and 179 should have no impact on jobs and employment opportunities. The amendments enable life insurers to lower their reserves for universal life policies that guarantee coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement. Insurance Regulation 147 allows for the recognition of mortality improvement beyond the valuation date for universal life insurance policies that guarantee coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement. Insurance Regulation 179 adopts mortality improvement factors that are to be used with current mortality rates to calculate reserves for universal life insurance policies that guarantee coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement. Insurers should not need to hire additional employees or independent contractors to comply with these new standards.

Office of General Services

NOTICE OF ADOPTION

Service-Disabled Veteran-Owned Business Enterprises

I.D. No. GNS-33-14-00004-A

Filing No. 39

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Addition of Part 252 to Title 9 NYCRR.

Statutory authority: Executive Law, section 369-i(5); and Executive Law, section 200

Subject: Service-Disabled Veteran-Owned Business Enterprises.

Purpose: To establish standards, procedures and criteria with respect to the Service-Disabled Veteran-Owned Business Enterprise program.

Substance of final rule: The proposed regulation makes extensive changes to the existing regulations governing the award process of State procurement contracts by facilitating and promoting Service-Disabled Veteran-Owned Business Enterprise ("SDVOBE") participation in State procurement. This process includes State certification of SDVOBES, the promulgation of measures and procedures to ensure these certified businesses are afforded meaningful participation in State procurement, and the monitoring and reporting of State agency compliance with the statewide goal for participation on State contracts by SDVOBES.

Sections 252.1-252.3 define terms unique to the scope and implementation of the SDVOBE program, outline State agency responsibilities in terms of program purpose, scope, and applicability, as well as provide for implementation of a statewide certification program.

(1) Section 252.1 defines the terms applicable to the program and makes clear that in order to benefit from this program, the SDVOBE must be certified by the OGS Division of Service-Disabled Veteran Owned Business Development (DSDVBD). This certification process is to ensure that the appropriate businesses, for which this regulation has been drafted, receive maximum benefits from the program. A certified SDVOBE means a business enterprise that is independently owned and operated and is authorized to do business in New York State. The business must be at least 51% owned by one or more service-disabled veterans in such a way that ownership is real, substantial, and continuous and the service-disabled veteran must exercise independent control over day-to-day business.

(2) As provided by Section 252.1(v), the SDVOBE must be a small business, meaning that the business has a significant business presence in the State, but is not dominant in its field and employs, based on industry, a certain number of persons as determined by the director, but not to exceed 300, taking into account various other factors.

(3) Pursuant to Section 252.1(s) and (z), to be considered a service-disabled veteran, one must have received an honorable or general discharge from the United States Army, Navy, Marines, Air Force, Coast Guard, and/or reserves thereof, and/or in the Army National Guard, Air National Guard, New York Guard and/or the New York Naval Militia. In addition, (a) in the case of the United States Army, Navy, Air Force,

Marines, Coast Guard, Army National Guard or Air National Guard and/or reserves thereof, a veteran must have received a compensation rating of ten percent or greater from the United States Department of Veterans Affairs or from the United States Department of Defense because of a service-connected disability incurred in the line of duty and (b) in the case of the New York Guard or the New York Naval Militia and/or reserves thereof, a veteran must be certified by the New York State Division of Veterans' Affairs pursuant to the appropriate provisions contained within the Code of Federal Regulations, as having an injury equivalent to a compensation rating of ten percent or greater from the United States Department of veterans affairs or from the United States Department of Defense because of a service-connected disability incurred in the line of duty.

(4) Pursuant to Sections 252.1(f) and 252.2, in order for a certified SDVOBE to benefit from a State procurement contract governed by this regulation, the SDVOBE must perform a commercially useful function by actually performing, managing, and supervising the work for which it is responsible. Additionally, where applicable, the SDVOBE must also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installation. The SDVOBE must add substantive value to the contract to be considered a commercially useful function. Various other factors may be applied to make a final determination.

(5) Pursuant to Sections 252.1(t) and 252.2(j), this program may be implemented using a "set aside." A set aside means the reservation in whole or in part of certain procurements by State agencies bidding where more than one certified SDVOBE can provide the services and/or commodities necessary to the State procurement contract. The Commissioner of General Services, in consultation with State agencies shall develop and provide written guidance on the appropriate use of set asides to State agencies.

(6) Pursuant to Section 252.2(a), in order to maximize the effectiveness of this program, where it is practical, feasible and appropriate, State agencies will seek to meet a six percent goal of participation by SDVOBES on all State contracts. Where it is not practical, feasible or appropriate for a State agency to seek the statewide goal of six percent, the agency may request a waiver. Individual State agencies may adopt agency-specific goals as long as those goals are reflected in the State agency's master goal plan submitted to the DSDVBD, and that the agency-specific goals are justified based on the following factors: (1) statewide availability of SDVOBES for construction, construction services, non-construction services, technology, commodities, or products; (2) statewide availability of SDVOBES for the State agency's State contracts found in the Directory of Service-Disabled Veteran Owned Businesses maintained by OGS; (3) the geographic location of the performance of the State contract; (4) the extent to which the geographical location of performance of the State contract hinders the ability of SDVOBES to perform; and (5) other relevant factors.

(7) Pursuant to Section 252.2(b)-(d), each State agency must have a master goal plan on file with the DSDVBD which must include any agency-specific goals, justifications thereof, descriptions of implementation strategies, practices, and procedures, as well as a list of personnel responsible for implementation. Each State agency's master goal plan is subject to review by the Director of the DSDVBD to ensure reasonableness of goals, as well as to judge the prospective effectiveness of the plan with regards to the program's overall goal of promoting SDVOBES.

(8) Pursuant to Section 252.2(e), each State agency must submit a report to OGS annually, and the report must include the relevant information necessary to assess the success of implementation of the master goal plan, including, but not limited to, the number and average amount of contracts entered into pursuant to this program.

(9) Pursuant to Section 252.2(f), each State agency must demonstrate a good faith effort to meet the State agency's goal adopted pursuant to this program. Whether or not a good faith effort has been made is determined by Director of the DSDVBD using the following factors: (1) the availability of SDVOBES capable of participating in the relevant State contracts; (2) State agency strategy to unbundle State contracts and solicit bids from SDVOBES; (3) whether there were available SDVOBES outside the region that could have performed; (4) whether joint ventures or other similar arrangements in order to include SDVOBES were encouraged; (5) the number of opportunities the State agency could have made discretionary purchases from SDVOBES, versus the number of times the State agency actually did so; (6) the amount paid to certified SDVOBES as a result of State agency's discretionary purchasing; (7) whether the State agency utilized set asides; (8) whether the State agency had the appropriate processes and procedures in place to ensure compliance with the goals, utilization plans, utilization reports, and waivers of this program; (9) whether the State agency submitted the appropriate reports; (10) any other relevant information or factors; and (11) any other information submitted by the State agency or other criteria that the Director of the DSDVBD deems relevant.

(10) Pursuant to Section 252.2(g), any State agency that fails to meet its goals must review its master goal plan and identify the necessary steps to be taken in order to meet its goals. The State agency may confer with the Director of DSDVBD to discuss performance improvements.

(11) Pursuant to Section 252.2(h), contractors shall be notified of the goal in the appropriate bid documents, and will also be provided with the current electronic list of certified Service-Disabled Veteran-Owned Businesses. In accordance with Section 252.2(i), contractors will then be required by State agencies to submit utilization plans that identify how the contractor plans to meet the contract's goals for SDVOBE participation. The contractor's utilization plan is subject to approval based on the contract's goals. If not approved, the contractor may attempt to remedy any deficiencies and re-submit within seven days. If the contractor fails to comply it may be disqualified. Pursuant to Section 252.2(k), once a State contract is executed, and the contractor's utilization plan has been approved, or appropriately waived, the plan will be posted on the State agency's website. Pursuant to Section 252.2(q), contractors must report directly to the State agency on utilization plan compliance. Pursuant to Section 252.2(r), subsequent to being awarded a State contract, the contractor may file a complaint with the State after becoming deficient with the implementation of the utilization plan in order to request a full or partial waiver.

(12) Similar to the scrutiny imposed on State agency compliance, pursuant to Section 252.2(s), contractors must be able to demonstrate a good faith effort to comply with their utilization plans by using certified SDVOBEs in a commercially useful function for the appropriate predetermined percentage value. Where the State has determined that a contractor has failed to comply and demonstrate a good faith effort to comply, after having given notice of deficiency, the State agency may proceed with the next ranked bidder if the State agency has not received a request to review its determination. Any contractor who willfully and intentionally fails to comply with the SDVOBE participation requirements shall be liable for damages, and shall provide for other appropriate remedies.

(13) Pursuant to Section 252.2(p), State agencies are responsible for determining contractor compliance with goals established in State contracts.

(14) Pursuant to Section 252.3, in order to effectively and efficiently implement the objectives of the program, the SDVOBEs must be properly certified. Applications can be obtained and returned to the DSDVBD. Applicants must be able to demonstrate that the SDVOBE meets the appropriate definitions of "small business," "veteran," and "service-disabled," where the service-disabled veteran exercises the requisite control and ownership over the business. As part of the application process, the place of business may be subject to inspection. Applicants will receive a status notification of the application, including any deficiencies that must be addressed, within thirty days of the date stamped on the application. Any deficiency must be cured within twenty days of notification or else the applicant will receive notification that the application has been rejected. An application may be withdrawn by an applicant without prejudice. Upon rejection of an application, an applicant must wait ninety days before re-applying. A written determination approving or denying an application must be provided in writing within sixty days of mailing the notice of application completion. Certification may be held for five years, unless certification is revoked, under the appropriate revocation procedures, due to a change in circumstances resulting in an applicant no longer being entitled to certification. Applicants already holding federal certification do not have to submit a New York State application and may instead submit a supplemental application.

Final rule as compared with last published rule: Nonsubstantive changes were made in Part 252.

Text of rule and any required statements and analyses may be obtained from: Paula B. Hanlon, Esq., New York State Office of General Services, 41st Floor, Corning Tower, Empire State Plaza, Albany, New York 12242, (518) 474-5607, email: RegsReceipt@ogs.ny.gov

Revised Regulatory Impact Statement

1. Statutory authority: Chapter 22 of the Laws of 2014 amended the Executive Law by creating a new Article 17-B, which establishes a program to increase participation of "Service-Disabled Veteran-Owned Business Enterprises", ("SDVOBE" as defined in the Text) in State contracting. Additionally, it required the Commissioner of the Office of General Services ("OGS") to promulgate regulations, within 90 days of the effective date of the new Article (May 12, 2014) to implement the new program created by law.

2. Legislative objectives: By enacting Chapter 22 of the Laws of 2014, the Legislature sought to increase the participation in the economy. The Legislature sought to provide additional assistance and support to better equip disabled veterans to form and expand small businesses. Chapter 22 provides that the Director of the Division of Service-Disabled Veterans' Business Development ("Director") or Commissioner of General Services

promulgate regulations that contain specific provisions that (a) provide measures and procedures to ensure that SDVOBEs are afforded the opportunity for meaningful participation in the performance of State contracts and to assist in State agencies' identification of those State contracts for which SDVOBEs may best perform; (b) provide for measures and procedures that assist State agencies in the identification of State contracts where service-disabled veteran contract goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOBE participation on State contracts; (c) achieve a statewide goal for participation on State contracts by SDVOBEs of six percent; (d) provide for procedures relating to submission and receipt of applications by SDVOBEs for certification; (e) provide for the monitoring and compliance of State contracts by State agencies with respect to the provisions of Article 17-B of the Executive Law; (f) provide for the requirement that State agencies submit regular reports, as determined by the Director, with respect to their SDVOBE program activity, including but not limited to, utilization reporting and State contract monitoring and compliance; (g) notwithstanding any provision of the State Finance Law, the Public Buildings Law, the Highway Law, the Transportation Law or the Public Authorities Law to the contrary, provide for the reservation or set-aside of certain procurements by State agencies in order to achieve the objectives of Article 17-B of the Executive Law; provided, however, that such procurements shall remain subject to (i) priority of preferred sources pursuant to Sections 162 and 163 of the State Finance Law; (ii) the approval of the Comptroller of the State of New York pursuant to Sections 112 and 163 of the State Finance Law and Section 2879-a of the Public Authorities Law; and (iii) the procurement record requirements pursuant to 163(9)(g) of the State Finance Law; and (h) provide for any other purposes to effectuate the new Article 17-B.

3. Needs and benefits: In order to enable SDVOBEs to grow and thrive by conducting business with the State of New York, Section 369-i(5) of the Executive Law specifically mandates that regulations be promulgated to effectuate the SDVOBE program. The addition of this new Part is necessary to comply with that mandate and will assist State agencies in maximizing their opportunities.

Among other things, the regulations establish a statewide certification program that provides standards and criteria for the DSDVBD to consider when determining whether to approve, deny or revoke an applicant's SDVOBE certification. Having a set list of criteria and an established process to follow helps to ensure that all applications will be evaluated in a consistent manner. Without these regulations, there is a risk that applicants could be evaluated using different criteria, resulting in inconsistent determinations. Establishing the criteria in regulation creates transparency and ensures the integrity of the program.

These regulations will also assist service-disabled veterans by clarifying the criteria they need to meet in order to submit an application. Providing this information in regulation helps to ensure that any SDVOBE wishing to become certified will know what is expected of them during the application process. Without providing a detailed process to follow, applications could be incomplete upon submission or misdirected to an incorrect location. The regulations provide a clear and single resource for applicants to go to for direction.

Additionally, the new Part 252 establishes standards, criteria and procedures for state agencies to follow when setting annual goals for participation. It also establishes a process by which State agencies submit their master goal plans. The regulations are necessary to maintain consistency across the agencies and establish the information that needs to be reported, as well as the procedures that State agencies must follow when submitting their plans. Finally, the regulations provide consequences for those State agencies failing to meet their goals. In order for the program to be successful, there must be a documented process in place for state agencies that do not comply.

4. Costs:

a. Costs for the implementation of, and continuing compliance with, the rule to regulated parties. OGS expects that there would be minimal, if any costs associated with the proposed regulations. The transmittal of applications and supporting documentation (if mailed) would have minimal costs associated, but are not anticipated to be significant or greater than normal business opportunity costs.

b. Costs for the implementation of, and continued administration of, the rule to the agency and to the State and its local governments. OGS expects to incur only minimal, if any, additional costs associated with the proposed regulations. The creation of a Director position is directed by the legislation. Any costs related to the proposed regulations would be associated with the administrative processing of certification applications submitted by applicants and plans and reports submitted by State agencies and authorities. The regulations do not apply to local governments and therefore do not impose any costs on local governments.

c. The information, including the source or sources of such information, and methodology upon which the cost analysis is based. The cost estimates

are based on OGS's experience with the Minority and Women-Owned Business Enterprise program, which has goals similar to this program.

5. Paperwork: The regulations will have minimal paperwork implications. The DSDVBD will need to create an application form that SDVOBEs may use to apply for certification, but the application is expected to be available on-line as well as in paper form. Additionally, State agencies and authorities are required to prepare goal plans and the DSDVBD is required to submit annual reports, but those requirements are directed by the legislation rather than by the proposed regulations. It is expected that the overall addition of paperwork to comply with the proposed regulations will be minimal.

6. Local government mandates: The subject regulations do not impose any program, service duty or responsibility upon any local governments, school districts, fire districts, or other special districts.

7. Duplication: The subject regulations do not duplicate other existing federal or State requirements.

8. Alternatives: Although the option of taking no regulatory action was considered, this alternative was rejected since Section 369-i(5) of the Executive Law requires that Director or the Commissioner promulgate rules and regulations for the specific purposes provided above in the "legislative objectives" section of this statement.

OGS has drafted these regulations streamlining the certification process and operations of the SDVOBE program to ensure that the benefits of the program are quickly provided to these businesses and diversify State procurements.

9. Federal standards: The regulations do not exceed any federal standards for similar SDVOBE programs.

10. Compliance schedule: OGS expects that regulated parties will be able to comply with the regulations when adopted.

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

No changes were made to the Statement in Lieu of a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement previously filed for this rulemaking, on November 17, 2014.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The only comments received were joint comments from New York State Assemblymembers Benedetto, Englebright, and Zebrowski.

Comment: A number of the comments made by the Assemblymembers suggest that the language of the Service-Disabled Veteran-Owned Business Enterprises ("SDVOBE") regulations should mirror the text of the regulations for the Minority- and Women-Owned Business Enterprises ("MWBE") program.

Response: OGS recognizes that the rules for the two programs are different. While there are similar purposes behind the two programs, there are unique aspects to both and those differences are reflected in the different rules. Unlike the MWBE program, a disparity study does not support the SDVOBE program. Data on the number and types of SDVOBEs, their operational issues, capacity, and ability to participate in public procurement is not readily available. OGS appreciates the comments made by the Assemblymembers and while no substantive changes to the rules are being made at this time, OGS recognizes that this is a new and innovative program and that, consequently, some change over time is inevitable. As OGS gains experience and data to enable OGS to enhance and improve the program, some changes may be necessary. Some of those may be addressed administratively and others may be handled through amendments to the rules.

Comment: The commenters express concern that Section 252.2(h)(1) permits State agencies to seek a "blanket waiver" of the SDVOBE goals and suggest that such provision be deleted from the rule.

Response: Section 252.2(h)(1) in referring to the "waiver" notes that the State agency must follow the process set forth in Section 252.2(m). In that subdivision, waivers are clearly associated with each proposed State contract award that includes the SDVOBE goals. Any waiver is attached to a specific State contract. In complying with the waiver requirements in Section 252.2(m), granting of a "blanket waiver" is not a possible outcome and is not part of the SDVOBE program.

Comment: The commenters note that Section 252.2(e), which sets forth the information that State agencies must report to OGS, includes the number of SDVOBEs certified, the number of applications for certification, the number of denials for certification, the number of appeals of such denials, the outcome of such appeals, and the average time required for the completion of the certification process. Because the certification process is under the control of OGS, this is information that OGS should already have, so it makes no sense for State agencies to report it to OGS. These items should be removed from the reporting requirements in Section 252.2(e).

Response: Section 252.2(e) has been revised to make the requested change.

Comment: Section 252.3(c)(3) states that if a SDVOBE that applies for certification is denied, a written notice will be provided stating the reasons for denial and the procedures for filing an appeal before a hearing officer. The commenters note, however, that there are no procedures outlined in the rules for the conduct of such an appeal. The hearing procedures set forth in Section 252.3(d) apply only to appeals of revocations, not denials of an application for certification.

Response: While procedures for the conduct of an appeal are not set forth in the rules, the intent is to provide information about the process and the associated procedures as part of the written notice. The process and associated procedures will provide due process to the applicant and will ensure that an appeal is fairly evaluated and an impartial decision rendered based on the facts, the law and these rules. As experience is gained in overseeing the SDVOBE program, a further review will be conducted to determine whether there is a benefit to outlining the process and procedures in these rules. In the interim, some latitude will provide opportunities to adjust practices based on the nature of the appeals that arise during implementation of the program.

Comment: The commenters note that the definition of "State agency" in Section 252.1(w) does not mirror the definition of such term in Executive Law § 369-h(6), as it should, which means that the rules do not bind the Dormitory Authority, the Facilities Development Corporation, NYSEDA, and the New York State Science and Technology Foundation when they enter into State contracts on behalf of a number of State authorities. The rule should be revised to match the statute.

Response: Section 252.1(w) has been revised to make the requested change.

Comment: The commenters note that Section 252.2(l)(9) states that a contractor changing its utilization plan after submission must notify the State agency and obtain approval "in accordance with this section and this subdivision." The commenters correctly surmise that the confusing language is a result of an inartful translation of the MWBE rule in 5 NYCRR § 142.6.

Response: Section 252.2(l)(9) has been revised to read "in accordance with this subdivision and subdivision (n) of this section."

Comment: The commenters state that Section 252.2(i) contains an erroneous reference to "certified minority- and women-owned business enterprises" rather than "certified service-disabled veteran-owned business enterprises."

Response: It appears the commenters may be referring to an early non-final version of the emergency rules. Section 252.2(i) of the emergency rules posted on the OGS website properly refer to certified SDVOBEs.

Office of Mental Health

NOTICE OF ADOPTION

Vital Access Program and Providers

I.D. No. OMH-46-14-00005-A

Filing No. 23

Filing Date: 2015-01-09

Effective Date: 2015-01-28

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

Action taken: Addition of Part 530 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.02 and 43.02; L. 2014, ch. 53

Subject: Vital Access Program and Providers.

Purpose: To establish a process by which providers may be designated as Vital Access Providers to receive supplemental funding.

Text of final rule: A new Part 530 is added to 14 NYCRR to read as follows:

PART 530

VITAL ACCESS PROGRAM and PROVIDERS

(Statutory authority: Mental Hygiene Law §§ 7.09, 31.02, 43.02, Chapter 53 of the Laws of 2014)

530.1 Background and Intent.

The purpose of this Part is to provide a means to support the stability and geographic distribution of mental health clinic services throughout all geographic and economic regions of the State. A designation of Vital

Access Provider denotes the Commissioner's determination to ensure patient access to a provider's essential services otherwise jeopardized by the provider's payer mix or geographic isolation.

530.2 Legal Base.

(a) Section 7.09 of the Mental Hygiene Law authorizes the Commissioner to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(b) Section 31.02 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of inpatient and outpatient mental health services.

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

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

530.3 Definitions.

(a) *Vital Access Program ("VAP")* means a program of supplemental funding and/or temporary rate or fee adjustments available to providers of mental health services that are determined by the Commissioner to be essential to the availability of mental health services in a geographic or economic region of the State but in financial jeopardy due to their payer mix or geographic isolation.

(b) *Vital Access Provider* means a provider of mental health clinic services that is licensed under Article 31 of the Mental Hygiene Law and that is designated by the Commissioner as eligible for participation in the Vital Access Program. It does not include a provider that is licensed under Article 28 of the Public Health Law.

530.4 Vital Access Program.

(a) The Commissioner may accept applications from licensed providers of mental health clinic services requesting designation as a Vital Access Provider eligible to receive supplemental funding or a temporary rate adjustment. The Commissioner may give priority to providers serving regions or populations in the State that he or she shall determine are in special need of services. Such applications must sufficiently demonstrate that:

(1) The provider is essential to maintaining access to the mental health services it is authorized to provide to individuals with mental illness who reside in the geographic or economic region of the State served by the provider;

(2) The provider is in financial jeopardy due to payer mix or geographic isolation;

(3) The additional resources provided by supplemental funding or a rate or fee adjustment will achieve one or more of the following:

(i) protect or enhance access to care;

(ii) protect or enhance quality of care;

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

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

(b) Application.

(1) The written application required pursuant to subdivision (a) of this Section shall be submitted to the Commissioner at least sixty (60) days prior to the requested effective date of the designation as a Vital Access Provider and shall include a proposed budget to achieve the goals identified in the application.

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

(c) Reimbursement.

A provider that is designated as a Vital Access Provider shall be eligible to receive supplemental funding or a temporary rate or fee adjustment.

(d) Conditions on Approval.

(1) Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time of no more than three years, as determined by the Commissioner, based upon review and approval of a specific plan of action to achieve one or more of the goals set forth in subdivision (a) of this section. At the end of the specified timeframe, the provider shall be reimbursed in accordance with the otherwise applicable rate-setting methodology or fee schedule pertaining to such provider.

(2) The Commissioner may establish, as a condition of designation as a Vital Access Provider, benchmarks, goals and standards to be achieved, and may require such periodic reports as he or she shall determine to be necessary to ensure their achievement. A determination by the Commissioner of a failure to demonstrate satisfactory progress in achieving such benchmarks, goals and standards shall be a basis for revoking the provider's designation as a Vital Access Provider, and terminating the supplemental funding or temporary rate or fee adjustment prior to the end of the specified timeframe.

(3) No portion of the funds received pursuant to this Part shall be

used for the payment of any prior debt or obligation incurred by the designated provider, or for any purpose not related to the purposes set forth in this Part.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 530.4(d)(1) and (2).

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

Revised Regulatory Impact Statement

The changes made to the published rule do not necessitate revision to the previously published Regulatory Impact Statement ("RIS") for the regulatory filing to create a new 14 NYCRR Part 503 – Vital Access Program and Providers. The revisions to the rule merely clarify the text by correcting technical errors (i.e., citation and grammar), which require no change to the RIS.

Revised Regulatory Flexibility Analysis

The changes made to the published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Business and Local Governments ("RFASBLG") for the regulatory filing to create a new 14 NYCRR Part 530 – Vital Access Program and Providers. The revisions to the rule merely clarify the text by correcting technical errors (i.e., citation and grammar), which require no change to the RFASBLG.

Revised Rural Area Flexibility Analysis

The changes made to the published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis ("RAFA") for the regulatory filing to create a new 14 NYCRR Part 530 – Vital Access Program and Providers. The revisions to the rule merely clarify the text by correcting technical errors (i.e., citation and grammar), which require no change to the RAFA.

Revised Job Impact Statement

The changes made to the published rule do not necessitate revision to the previously published Job Impact Statement ("JIS") for the regulatory filing to create a new 14 NYCRR Part 530 – Vital Access Program and Providers. The revisions to the rule merely clarify the text by correcting technical errors (i.e., citation and grammar), which require no change to the JIS.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-47-14-00011-A

Filing No. 44

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Amendment of Part 578 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

Subject: Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

Purpose: Elimination of the trend factor effective July 1, 2014 through June 30, 2015.

Text or summary was published in the November 26, 2014 issue of the Register, I.D. No. OMH-47-14-00011-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

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

Prevention of Influenza Transmission

I.D. No. OMH-04-15-00002-P

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

Proposed Action: Amendment of Part 509 of Title 14 NYCRR.

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

Subject: Prevention of Influenza Transmission.

Purpose: Provide clarification and flexible system for documentation.

Text of proposed rule: 1. Section 509.3 of Title 14 NYCRR is amended to read as follows:

§ 509.3 Definitions. For the purposes of this Part:

(a) Facility shall mean:

(1) a psychiatric center established pursuant to Section 7.17 of the Mental Hygiene Law; including all programs or services operated by, or under the auspices of, such psychiatric center;

(2) a hospital operated pursuant to Part 582 of this Title.

(b) Influenza season shall mean the period of time during which influenza is prevalent as determined by the Commissioner of Health.

(c) *Influenza vaccine or Vaccine shall mean a vaccine currently licensed for immunization and distribution in the United States by the Food and Drug Administration (FDA) for active immunization for the prevention of influenza disease caused by influenza virus(es) or authorized for such use by the FDA pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND).*

(d) *Patient shall mean any person receiving services from a facility, as defined in this section, as well as any person presenting for admission to a facility.*

[(d)](e) Personnel shall mean all persons employed or affiliated with a facility, as defined in this Section, whether paid or unpaid, including but not limited to employees, members of the medical, nursing, and other treatment staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with influenza, they could potentially expose patients to the disease.

2. Section 509.4 of Title 14 NYCRR is amended to read as follows:

Section 509.4 Documentation Requirements.

(a) All facilities shall determine and document which persons qualify as "personnel" under this Part.

(b) All facilities shall document the influenza vaccination status of all personnel for the current influenza season in a secure file separate from their personnel history folder. Documentation of vaccination must include [the name and address of the individual who ordered or administered the vaccine and the date of vaccination.]:

(1) *a document prepared by the licensed healthcare practitioner who administered the vaccine, indicating that one dose of influenza vaccine was administered, and specifying the vaccine formulation and the date of administration; or*

(2) *for personnel employed by a healthcare employer other than the facility in which he or she is providing services, an attestation by the employer that the employee(s) named in the attestation has been vaccinated against influenza for the current influenza season, and that the health care employer maintains documentation of vaccination of the employee(s), as described in paragraph (1) of this subdivision; or*

(3) *for student personnel, an attestation by the professional school that the student(s) named in the attestation has been vaccinated against influenza for the current influenza season, and that the school maintains documentation of the vaccination of the student(s) as described in paragraph (1) of this subdivision.*

(c) During the influenza season, all facilities shall ensure that all personnel who have not been vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients [may be] *are typically present* [Facilities shall supply such masks to personnel, free of charge.], *except that:*

(1) *when personnel provide services outside the facility, mask wear shall not be required by this section, provided that this paragraph shall not be interpreted as eliminating the requirement that personnel wear a mask pursuant to standard and transmission-based precautions not addressed by this section;*

(2) *personnel required to wear a mask by this subdivision, but who provide speech therapy services, may remove the mask when necessary to deliver care, such as when modeling speech; and*

(3) *for any person who lip reads, personnel required to wear a mask by this subdivision may remove the mask when necessary for communication.*

(d) Upon the request of the Office, a facility must report the number and percentage of personnel that have been vaccinated against influenza for the current influenza season.

(e) All facilities shall develop and implement a policy and procedure to ensure compliance with the provisions of this Part. The policy and procedure shall include, but is not limited to, the identification of those areas where unvaccinated personnel must wear a mask pursuant to subdivision (c) of this Section.

(f) *Facilities shall supply surgical or procedure masks required by this section at no cost to personnel.*

(g) *Nothing in this Part shall be interpreted as prohibiting any facility from adopting policies that are more stringent than the requirements of this Part.*

[(f)](h) For those facilities that are required to comply with 10 NYCRR Section 2.59, compliance with such Section shall be deemed compliance with this Part.

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

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

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

Regulatory Impact Statement

1. Statutory Authority: Section 7.07 of the Mental Hygiene Law charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.

Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of Article 31 of such law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and charges OMH with the responsibility for ensuring that persons with mental illness receive high quality care and treatment.

3. Needs and Benefits: Part 509 of Title 14 NYCRR requires all OMH-operated psychiatric centers (including all programs and services operated by, or under the auspices of such psychiatric centers) and Article 31 "free standing" psychiatric hospitals to ensure that all personnel who have not been vaccinated against influenza wear a mask during the influenza season. These regulations are consistent with New York State Department of Health (DOH) regulations at 10 NYCRR Section 2.59, which require all unvaccinated personnel in certain health settings to wear surgical or procedure masks during the time when the Commissioner of Health determines that influenza is prevalent. The DOH regulations apply to general hospitals, nursing homes, diagnostic and treatment centers, certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, limited licensed home care service agencies and hospices (licensed by DOH under Public Health Law, Articles 28, 36 and 40). DOH recently enacted clarifying amendments to its regulations, which codified its interpretation of 10 NYCRR Section 2.59, as published by DOH in a document entitled "Frequently Asked Questions (FAQ) Regarding Title 10 Section 2.59 "Regulations for Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel." OMH's proposed amendments to 14 NYCRR Part 509 mirror the DOH amendments. Specifically, the amendments clarify that the masking requirement applies in those areas where patients are "typically" present. The proposed amendments also define "influenza vaccine" to mean a vaccine approved as an influenza vaccine by the Food and Drug Administration (FDA) or pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND). The amendments also clarify that the regulation is not intended to require mask wearing while a patient is receiving services outside the regulated facility. The final clarification amendment provides that the regulation should not be interpreted as requiring mask wear by unvaccinated personnel who provide speech therapy services, during the time that such personnel are providing care. Similarly, for any person who reads lips, unvaccinated personnel may remove the mask when necessary to communicate.

The proposed amendments to 14 NYCRR Part 509 also replicate a substantive change made by DOH to 10 NYCRR Section 2.59, i.e., they revise the documentation requirement for facilities. The intent of this

change is to create a more flexible system for documenting a vaccination status, thereby easing the paperwork burden on regulated facilities. Specifically, required documentation would include only the date of vaccination and information specifying the vaccine formulation administered. Further, where the personnel of a facility includes contract staff and students, the facility may accept an attestation from the employer or school, stating that the specified persons have been vaccinated and that the employer or school maintains the required documentation.

4. Costs: (a) Costs to Local Government: These regulatory amendments will not result in any additional costs to local government.

(b) Costs to State and Regulated Parties: These regulatory amendments will not result in any additional costs to the State or regulated parties.

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, except to the extent that the local governmental unit is a provider of services.

6. Paperwork: These amendments will not result in any increase in paperwork requirements of facilities covered by the regulations. In fact, the amendments to the documentation requirements are intended to reduce paperwork burdens.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements. In instances where an inpatient program is required to comply with the Department of Health regulations found in 10 NYCRR Section 2.59, compliance with that section shall be deemed compliance with this Part.

8. Alternatives: As the amendments are intended to conform OMH regulations with similar DOH regulations, no alternatives were 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 will be effective immediately upon adoption.

Regulatory Flexibility Analysis

14 NYCRR Part 509 requires all OMH-operated psychiatric centers (including all programs and services operated by, or under the auspices of such psychiatric centers) and Article 31 “free standing” psychiatric hospitals to ensure that all personnel who have not been vaccinated against influenza wear a mask during the influenza season. These regulations are consistent with similar New York State Department of Health (DOH) regulations at 10 NYCRR Section 2.59. DOH recently enacted clarifying amendments to its regulations, and OMH’s proposed amendments to 14 NYCRR Part 509 mirror the DOH amendments. Specifically, the amendments:

- clarify that the masking requirement applies in those areas where patients are “typically” present;
- define “influenza vaccine” to mean a vaccine approved as an influenza vaccine by the Food and Drug Administration (FDA) or pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND);
- clarify that the regulation is not intended to require mask wearing while a patient is receiving services outside the regulated facility;
- clarify that the regulation should not be interpreted as requiring mask wear by unvaccinated personnel who provide speech therapy services, during the time that such personnel are providing care, and for any person who reads lips, unvaccinated personnel may remove the mask when necessary to communicate; and
- revise the documentation requirement to create a more flexible system for documenting a vaccination status, thereby easing the paperwork burden on regulated facilities.

As stated above, the provisions of 14 NYCRR Part 509 apply to OMH-operated psychiatric centers (including all programs and services operated by, or under the auspices of such psychiatric centers) and “free standing” psychiatric hospitals licensed under Article 31 of the Mental Hygiene Law. All of these hospitals employ more than 100 people; therefore, none of them qualify as a small business. As there will be no adverse economic impact on small business or local governments, a Regulatory Flexibility Analysis for Small Business and Local Governments has not been submitted with this notice.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: In New York State, 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile:

Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

14 NYCRR Part 509 requires all OMH-operated psychiatric centers (including all programs and services operated by, or under the auspices of such psychiatric centers) and Article 31 “free standing” psychiatric hospitals to ensure that all personnel who have not been vaccinated against influenza wear a mask during the influenza season. These regulations are consistent with similar New York State Department of Health (DOH) regulations at 10 NYCRR Section 2.59. DOH recently enacted clarifying amendments to its regulations, and OMH’s proposed amendments to 14 NYCRR Part 509 mirror the DOH amendments. Specifically, the amendments:

- clarify that the masking requirement applies in those areas where patients are “typically” present;
- define “influenza vaccine” to mean a vaccine approved as an influenza vaccine by the Food and Drug Administration (FDA) or pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND);
- clarify that the regulation is not intended to require mask wearing while a patient is receiving services outside the regulated facility;
- clarify that the regulation should not be interpreted as requiring mask wear by unvaccinated personnel who provide speech therapy services, during the time that such personnel are providing care, and for any person who reads lips, unvaccinated personnel may remove the mask when necessary to communicate; and
- revise the documentation requirement to create a more flexible system for documenting a vaccination status, thereby easing the paperwork burden on regulated facilities.

2. Reporting, recordkeeping and other compliance requirements and professional services: All facilities covered by the regulation will have to document the vaccination status of each personnel member as defined in this regulation for influenza virus; however, the amendments to Part 509 revise the documentation requirements to create a more flexible system for documenting a vaccination status, thereby easing the paperwork burden on regulated facilities. No additional professional services are required as a result of this regulation.

3. Compliance costs: These amendments do not create any new costs for small businesses or local governments. To the extent that regulated parties are located in rural areas, the revised documentation requirements are expected to ease the regulatory burden on these entities.

4. Economic and technological feasibility: This proposal is economically and technically feasible, as it does not impose any additional burdens.

5. Minimizing adverse impact: This proposal does not create any adverse effect on regulated parties that would require a minimization analysis.

6. Participation of public and private interests in rural areas: In accordance with statutory requirements, the rule will be presented to the Behavioral Health Services Advisory Council for review and recommendation at an upcoming meeting.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted with this rule making. The amendments to 14 NYCRR Part 509 provide clarification and allow for a more flexible documentation system with respect to mask wearing requirements during influenza season in all OMH-operated psychiatric centers (including all programs and services operated by, and under the auspices of, such psychiatric centers) and Article 31 “free standing” psychiatric hospitals. It is apparent from the nature and purpose of the rule that it will not have an impact on jobs and employment opportunities.

Department of Motor Vehicles

NOTICE OF EXPIRATION

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

Personalized Plates for Historical Motor Vehicles

I.D. No.	Proposed	Expiration Date
MTV-01-14-00006-P	January 8, 2014	January 8, 2015

Niagara Frontier Transportation Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Smoking

I.D. No. NFT-04-15-00015-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 1151 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1299-e (14), 1299-f(4) and (7)

Subject: Smoking.

Purpose: To clarify where smoking is prohibited at NFTA locations.

Text of proposed rule: Section 1151.9 is amended to read as follows:
1151.9 Smoking.

No person shall smoke, carry or possess a lighted cigarette, cigar, pipe, match or other lighted equipment capable of causing naked flame inside any transportation facility or transportation vehicle. No person shall use any electronic or battery operated device that is capable of delivering vapor for inhalation, with or without nicotine, inside any transportation facility or transportation vehicle. No person shall smoke, carry or possess a lighted cigarette, cigar, pipe, match or other lighted equipment capable of causing naked flame, or use any electronic or battery operated device that is capable of delivering vapor for inhalation, with or without nicotine:

- (a) within 20 feet of the main entrance to any transportation facility;
- (b) inside any covered parking area that is physically part of or connected to a transportation facility;
- (c) within 20 feet of building air intake ducts; [and]
- (d) within 20 feet of the storage of flammable and combustible materials[.];
- (e) outside the designated smoking area for the Metropolitan Transportation Center that is on North Division Street, across from the taxi parking;
- (f) outside the designated smoking area for the Buffalo Niagara International Airport that is located outside the arrivals and departures area of the terminal; and
- (g) outside either of the two designated smoking areas at the Niagara Falls International Airport that are located at opposite ends outside the terminal.

Text of proposed rule and any required statements and analyses may be obtained from: Brigitte R. Whitmore, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, (716) 855-7219, email: Brigitte_Whitmore@nfta.com

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

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

Consensus Rule Making Determination

The Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being repealed or the rule as written for the following reasons:

1. Most of the changes are explanatory and/or are technical in nature.
2. None of the changes are controversial.

Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule is the regulation of smoking at NFTA facilities. The rule does not impact hiring practices nor does it change the rules regarding smoking inside NFTA facilities.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Amendments to Rate Setting Methodology: Rates for Residential Habilitation Delivered in IRAs and CRs and for Day Habilitation

I.D. No. PDD-46-14-00003-A

Filing No. 41

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Amendment of Subpart 641-1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Subject: Amendments to Rate Setting Methodology: Rates for Residential Habilitation Delivered in IRAs and CRs and for Day Habilitation.

Purpose: To amend the new rate setting methodology that was effective in July 2014.

Text or summary was published in the November 19, 2014 issue of the Register, I.D. No. PDD-46-14-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: RAU.unit@opwdd.ny.gov

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Amendments to Rate Setting for Non-State Providers: Intermediate Care Facilities for Persons with Developmental Disabilities

I.D. No. PDD-46-14-00004-A

Filing No. 40

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Amendment of Subpart 641-2 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Subject: Amendments to Rate Setting for Non-State Providers: Intermediate Care Facilities for Persons with Developmental Disabilities.

Purpose: To amend the new rate setting methodology that was effective July 2014.

Text or summary was published in the November 19, 2014 issue of the Register, I.D. No. PDD-46-14-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: RAU.unit@opwdd.ny.gov

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Approve the Waiver Request of Tariff Provisions and Main Extension Regulations

I.D. No. PSC-17-12-00015-A

Filing Date: 2015-01-12

Effective Date: 2015-01-12

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

Action taken: On 1/8/15, the PSC adopted an order approving the joint petition of Saratoga Water Services, Inc./Thomas P. Deveno and Thomas J. Farone for a waiver of tariff provisions and main extension regulations to allow for the provision of service.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

Subject: Approve the waiver request of tariff provisions and main extension regulations.

Purpose: To approve the waiver of tariff provisions and main extension regulations.

Substance of Final Rule: The Commission, on January 8, 2015, adopted an order approving the joint petition of Saratoga Water Services, Inc. (SWS) and Thomas P. Deveno and Thomas J. Farone for a waiver of SWS's tariff provisions and main extension regulations to allow for the provision of service to a proposed project in the Town of Malta, Saratoga County, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-W-0148SA1)

NOTICE OF ADOPTION

Denying a Petition to Allow Certain NYPA Municipal Customers to Opt-In to SBC and RPS Programs

I.D. No. PSC-25-14-00012-A

Filing Date: 2015-01-13

Effective Date: 2015-01-13

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

Action taken: On 1/8/15, the PSC adopted an order denying the petition of Global Structured Finance Advisors and GP Renewables & Trading, on behalf of New York Power Authority municipal customers seeking to opt-in to SBC and RPS Programs.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

Subject: Denying a petition to allow certain NYPA municipal customers to opt-in to SBC and RPS programs.

Purpose: To deny a petition to allow certain NYPA municipal customers to opt-in to SBC and RPS programs.

Substance of final rule: The Commission, on January 8, 2015, adopted an order denying the petition of Global Structured Finance Advisors and GP Renewables & Trading, on behalf of New York Power Authority municipal customers seeking to opt-in to the System Benefits Charge and Renewable Portfolio Standard 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social

security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(03-E-0188SA50)

NOTICE OF ADOPTION

Allowing Quadlogic Controls to Use the Quadlogic MiniCloset – 5N Multi Tenant Smart Meter

I.D. No. PSC-28-14-00011-A

Filing Date: 2015-01-12

Effective Date: 2015-01-12

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

Action taken: On 1/8/15, the PSC adopted an order approving the petition of Quadlogic Controls Corporation for the Quadlogic MiniCloset – 5N, to be used to monitor electric flow in submetering applications.

Statutory authority: Public Service Law, section 67(1)

Subject: Allowing Quadlogic Controls to use the Quadlogic MiniCloset – 5N Multi Tenant Smart Meter.

Purpose: To allow Quadlogic MiniCloset – 5N Multi Tenant Smart Meter in New York State.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving a petition filed by Quadlogic Controls Corporation to allow the use of the Quadlogic Controls MiniCloset – 5N electric meter for submetering applications, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-E-0223SA1)

NOTICE OF ADOPTION

Adopting a Joint Proposal to Resolve a Dispute Over Gas Imbalance Charges

I.D. No. PSC-29-14-00008-A

Filing Date: 2015-01-09

Effective Date: 2015-01-09

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

Action taken: On 1/8/15, the PSC adopted an order approving the terms of a joint proposal resolving a dispute regarding Energy Service Company gas imbalance charges.

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

Subject: Adopting a joint proposal to resolve a dispute over gas imbalance charges.

Purpose: To adopt a joint proposal to resolve a dispute over gas imbalance charges.

Substance of final rule: The Commission, on January 8, 2015, adopted the terms of a joint proposal, as modified, by Consolidated Edison Company of New York, Inc., the Marathon Energy Coalition, and Censtar Energy Corp. that resolves a dispute regarding Energy Service Company gas imbalance charges for the months of January, February and March, 2014, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social

security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-G-0138SA1)

NOTICE OF ADOPTION

To Retain \$13.5 Million, the Intrastate Portion, of a \$22.1 Million Property Tax Refund

I.D. No. PSC-31-14-00003-A

Filing Date: 2015-01-09

Effective Date: 2015-01-09

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

Action taken: On 1/8/15, the PSC adopted an order approving the petition of Verizon New York Inc. (Verizon) to retain a portion of its property tax refund.

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

Subject: To retain \$13.5 million, the intrastate portion, of a \$22.1 million property tax refund.

Purpose: To allow Verizon to retain the intrastate portion of the property tax refund.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving the petition of Verizon New York Inc. (Verizon) to retain the intrastate portion, \$13.5 million, of a \$22.1 million property tax refund received from the City of New York, associated with the 2012-2013 and the 2013-2014 tax years, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-C-0248SA1)

NOTICE OF ADOPTION

Amendments to PSC 10, Rider S, Commercial System Relief Program and Rider U, Distribution Load Relief Program

I.D. No. PSC-38-14-00006-A

Filing Date: 2015-01-09

Effective Date: 2015-01-09

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

Action taken: On 1/8/15, the PSC adopted an order approving the tariff filing of Consolidated Edison Company of New York, Inc., with exceptions, to amend PSC No. 10, effective January 15, 2015.

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

Subject: Amendments to PSC 10, Rider S, Commercial System Relief Program and Rider U, Distribution Load Relief Program.

Purpose: To amend PSC No. 10, Rider S, Commercial System Relief Program and Rider U, Distribution Load Relief Program.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving the tariff filing of Consolidated Edison Company of New York, Inc. (the Company), with exceptions, to amend PSC 10 — Electricity, to make revisions to Rider S — Commercial System Relief Program and Rider U — Distribution Load Relief Program, and directed the Company to make further revisions, 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: Elaine Agresta, Public Service Com-

mission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-E-0573SA3)

NOTICE OF ADOPTION

Allowing the Installation of Communication Devices for Daily Meter Reading for Gas Balancing Services

I.D. No. PSC-38-14-00013-A

Filing Date: 2015-01-08

Effective Date: 2015-01-08

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

Action taken: On 1/8/15, the PSC adopted an order approving the tariff filing of New York State Electric & Gas Corporation to make changes to the rates, charges, rules and regulations contained in PSC Nos. 87 and 88.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Allowing the installation of communication devices for daily meter reading for gas balancing services.

Purpose: To allow for the installation communication devices used for daily meter reading for gas balancing services.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving the tariff filing by New York State Electric & Gas Corporation to amend PSC 87 and 88—Gas, to allow for the installation of alternative communication devices used for daily meter reading for gas balancing services to update the notification requirements of customer enrollment in conformance with the Uniform Business Practices, to become effective on February 1, 2015.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-G-0377SA1)

NOTICE OF ADOPTION

Allowing the Installation of Communication Devices for Daily Meter Reading for Gas Balancing Services

I.D. No. PSC-38-14-00016-A

Filing Date: 2015-01-08

Effective Date: 2015-01-08

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

Action taken: On 1/8/15, the PSC adopted an order approving the tariff filing of Rochester Gas and Electric Corporation to make various changes to the rates, charges, rules and regulations contained in PSC No. 16, to become effective.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Allowing the installation of communication devices for daily meter reading for gas balancing services.

Purpose: To allow for the installation of communication devices for daily meter reading for gas balancing services.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving the tariff filing by Rochester Gas and Electric Corporation to amend PSC 16—Gas, to allow for the installation of alternative communication devices used for daily meter reading for gas balancing services to update the notification requirements of customer enrollment in conformance with the Uniform Business Practices, to become effective on February 1, 2015.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-G-0376SA1)

NOTICE OF ADOPTION

Modifications to the Commission’s Electric Safety Standards

I.D. No. PSC-43-14-00004-A

Filing Date: 2015-01-13

Effective Date: 2015-01-13

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

Action taken: On 1/8/15, the PSC adopted an order modifying the Electric Safety Standards, including revisions to the reporting requirements contained in the standards.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Modifications to the Commission’s Electric Safety Standards.

Purpose: To modify the Commission’s Electric Safety Standards.

Substance of Final Rule: The Commission, on January 8, 2015, adopted an order approving a petition filed by the New York State utilities to modify the Electric Safety Standards, including revisions to the reporting requirements contained in the standards, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(04-M-0159SA10)

NOTICE OF ADOPTION

To Enter into a Long-Term Debt and Extend and Modify the EFC Surcharge for Repayment of the EFC Loan

I.D. No. PSC-44-14-00022-A

Filing Date: 2015-01-09

Effective Date: 2015-01-09

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

Action taken: On 1/8/15, the PSC adopted an order approving the petition of Beaver Dam Lake Corporation (Beaver Dam Lake) to enter into a long-term debt and extend and modify the current New York State Environmental Facilities Corporation (EFC) surcharge.

Statutory authority: Public Service Law, sections 89-f and 89-b

Subject: To enter into a long-term debt and extend and modify the EFC surcharge for repayment of the EFC loan.

Purpose: To allow Beaver Dam Water to enter into a long-term debt and to extend and modify the current EFC surcharge for repayment.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving the petition of Beaver Dam Lake Corporation, to enter into a long-term debt of up to \$2,020,503 through the Drinking Water State Revolving Fund and to extend and modify the current New York State Environmental Facilities Corporation (EFC) surcharge for the repayment of the EFC loan, 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: Elaine Agresta, Public Service Com-

mission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-W-0459SA1)

NOTICE OF ADOPTION

Approval of NYAW to Use the \$4,294,834 Million in Proceeds from the Sale of Its Former Headquarters

I.D. No. PSC-46-14-00011-A

Filing Date: 2015-01-12

Effective Date: 2015-01-12

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

Action taken: On 1/8/15, the PSC adopted an order approving the petition of New York American Water Company, Inc. (NYAW) to use proceeds from the sale of its former headquarters.

Statutory authority: Public Service Law, section 89-f

Subject: Approval of NYAW to use the \$4,294,834 million in proceeds from the sale of its former headquarters.

Purpose: To approve NYAW use the \$4,294,834 million in proceeds from the sale of its former headquarters.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving the petition of New York American Water Company, Inc. (NYAW), to use the \$4,294,834 million in proceeds from the sale of its former headquarters to offset its current Revenue, Production Costs and Property Tax Reconciliation filing, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-W-0072SA2)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Disposition of Tax Refunds and Other Related Matters

I.D. No. PSC-04-15-00012-P

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

Proposed Action: The Commission is considering whether to approve or reject, in whole or part, a request by KeySpan Gas East Corporation d/b/a National Grid proposing the disposition of a property tax refund.

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

Subject: Disposition of tax refunds and other related matters.

Purpose: To determine the disposition of tax refunds and other related matters.

Public hearing(s) will be held at: 10:30 a.m., April 8, 2015 at Department of Public Service, Three Empire State Plaza, 3rd Fl., Hearing Rm., Albany, NY (Evidentiary Hearings)*

*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Web Site (www.dps.ny.gov) under Case 14-G-0503.

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

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

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by KeySpan East Gas d/b/a National Grid to implement its proposed disposition of a property tax refund pursuant under PSL Section 113(2). 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.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(14-G-0503SP1)

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

Re-Billing SC No. 2 Customers from March 2008 Through March 2014

I.D. No. PSC-04-15-00008-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 approve, modify or reject in whole or in part the filing made on December 26, 2014 by The Brooklyn Union Gas Company and KeySpan Gas East Corporation regarding billing SC No. 2 customers.

Statutory authority: Public Service Law, sections 65, 66 and 113

Subject: Re-billing SC No. 2 customers from March 2008 through March 2014.

Purpose: To determine whether re-billing SC No. 2 customers by the Companies' proposed methodology customers is appropriate.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a filing made by The Brooklyn Union Gas Company d/b/a National Grid NY ("KEDNY") and KeySpan Gas East Corporation d/b/a National Grid ("KEDLI") (collectively, the "Companies") on December 26, 2014 in compliance with an Order dated October 27, 2014 (October Order) that required the Companies to submit a plan to (i) identify non-residential gas customers on Service Classification (SC) No. 2 that were misclassified as heating customers on an annual basis (March to March) and (ii) as appropriate, refund those customers who were incorrectly charged a more expensive heating rate for each twelve month period between March 2008 through March 2014.

The October Order required the Companies to provide the Commission with information concerning their ability to identify current SC No. 2 customers who were misclassified as heating customers during the past billing periods at issue, along with a plan for targeting refunds to those customers. On December 26, 2014, the Companies submitted an analysis describing the significant costs it would incur to identify some misclassified customers and proposed a plan for targeting refunds to those SC No. 2 customers likely to have been vulnerable to improper placement on the heating rate of SC No. 2, and provided a methodology for refunds reasonably equivalent to the overbilling that either did or might have occurred.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(14-G-0091SP2)

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

To Start and Finish Construction of Distribution and Service Lines in Certain Municipalities in Clinton County by Dates Certain

I.D. No. PSC-04-15-00009-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 require New York State Electric & Gas Corporation (NYSEG) to start and complete construction of gas distribution and service lines in certain municipalities in Clinton County by dates certain.

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

Subject: To start and finish construction of distribution and service lines in certain municipalities in Clinton County by dates certain.

Purpose: To require NYSEG to start and complete construction of distribution and service lines in municipalities in Clinton County.

Substance of proposed rule: New York State Electric & Gas Corporation (NYSEG) filed a petition to Amend its Certificate of Public Convenience and Necessity and to Exercise Gas Franchises in the Towns of Dannemora, Peru, Saranac and Champlain, the Villages of Dannemora and Champlain, and the City of Plattsburgh, Clinton County, New York (in Case 13-G-0092, a licensing proceeding under Section 68 of the Public Service Law). In the licensing proceeding, the Commission is considering whether to grant the petition. The Commission is also considering whether to approve, modify or reject, in whole or in part, a rule proposed by the Staff of the Department of Public Service requiring that NYSEG start construction of service lines in the areas in the specified municipalities where distribution lines exist by a date certain and complete such construction by a date certain, and to start construction of distribution and service lines in such municipalities where appropriate from an economic and environmental standpoint by a date certain and to complete such construction by a date certain. The Commission may also consider related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(13-G-0092SP1)

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

To Modify the Retail Access Program Under SC No. 19 — Seller Transportation Aggregation Service

I.D. No. PSC-04-15-00010-P

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

Proposed Action: The Commission is considering a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Service P.S.C. No. 12.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To modify the retail access program under SC No. 19 — Seller Transportation Aggregation Service.

Purpose: To modify the retail access program to implement Tier 2A — Storage Capacity Release and make other tariff changes.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid NY (the Company) made in compliance with Commission Order issued October 23, 2014 in Case 14-G-0330, et al. The Company proposes to amend the tariff provisions of its retail access program under Service Classification No. 19 — Seller Transportation Aggregation Service to implement changes to core monthly balanced transportation. The tariff revisions will implement Tier 2A — Storage Capacity Release, in which storage capacity assets and related storage transportation assets are to be released to Sellers starting May 1, 2015. In conjunction with the storage capacity release, the tariff revisions provide that the Company will transfer gas inventory that remains in storage as of May 1, 2015 to Sellers at the Company's weighted average storage inventory price. The existing retail access storage service which bundles storage capacity with inventory will be renamed Tier 2B — Retail Access Storage and will continue to be provided to Sellers in lieu of a physical capacity release of storage assets that are not releasable. The tariff revisions will also effectuate a weather true-up adjustment each day to account for any difference between actual and forecasted weather on each Seller's daily delivery quantity. The weather true-up adjustment will be applied to each Seller's available Tier 2B — Retail Access Storage inventory balance. The proposed amendments have an effective date of April 1, 2015.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(14-G-0331SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Modify the Retail Access Program Under SC No. 8 — Seller Services

I.D. No. PSC-04-15-00011-P

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

Proposed Action: The Commission is considering a proposal filed by KeySpan Gas East Corp. dba Brooklyn Union of L.I. to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Services P.S.C. No. 1 — Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To modify the retail access program under SC No. 8 — Seller Services.

Purpose: To modify the retail access program to implement Tier 2A — Storage Capacity Release and make other tariff changes.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by KeySpan Gas East Corp. dba Brooklyn Union of L.I. (the Company) made in compliance with Commission Order issued October 23, 2014 in Case 14-G-0330, et al. The Company proposes to amend the tariff provisions of its retail access program under Service Classification No. 8 — Seller Service to implement changes to core monthly balanced transportation. The tariff revisions will implement Tier 2A — Storage Capacity Release, in which storage capacity assets and related storage transportation assets are to be released to Sellers starting May 1, 2015. In conjunction with the storage capacity release, the tariff revisions provide that the Company will transfer gas inventory that remains in storage as of

May 1, 2015 to Sellers at the Company's weighted average storage inventory price. The existing retail access storage service which bundles storage capacity with inventory will be renamed Tier 2B — Retail Access Storage and will continue to be provided to Sellers in lieu of a physical capacity release of storage assets that are not releasable. The tariff revisions will also effectuate a weather true-up adjustment each day to account for any difference between actual and forecasted weather on each Seller's daily delivery quantity. The weather true-up adjustment will be applied to each Seller's available Tier 2B — Retail Access Storage inventory balance. The proposed amendments have an effective date of April 1, 2015.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(14-G-0330SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rider L – Direct Load Control Program (DLC) and Residential Smart Appliance Program (RSAP)

I.D. No. PSC-04-15-00013-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 a petition by Consolidated Edison Company of New York, Inc. to modify Rider L – Direct Load Control Program contained in P.S.C. No. 10 – Electricity, and the Residential Smart Appliance Program.

Statutory authority: Public Service Law, sections 65(1), 66(1) and (12)

Subject: Rider L – Direct Load Control Program (DLC) and Residential Smart Appliance Program (RSAP).

Purpose: To expand the DLC program, replace failed control devices, and to expand the RSAP pilot.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition by Consolidated Edison Company of New York, Inc. to modify Rider L – Direct Load Control Program contained in P.S.C. No. 10 – Electricity and its Residential Smart Appliance Program. The Company proposes to increase the number of customers participating in the DLC program by increasing the annual installation goal of new internet-communicating thermostats, to increase the annual replacement rate of non-responding thermostats, and to expand the pilot Residential Smart Appliance Program. The proposed filing does not have an effective date.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(15-E-0012SP1)

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

**Request for Waiver of 6 NYCRR Part 501 and United Water's
Tariff Provisions Governing Main Extensions**

I.D. No. PSC-04-15-00014-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 whether to grant, deny or modify a petition of United Water New Rochelle and Saber Dobbs Ferry, LLC for a waiver of 16 NYCRR section 501.4 and United Water's tariff regarding a proposed main extension.

Statutory authority: Public Service Law, sections 89-b and 89-c

Subject: Request for waiver of 6 NYCRR Part 501 and United Water's tariff provisions governing main extensions.

Purpose: To grant, deny or modify a petition for a waiver of 6 NYCRR Part 501 and related United Water's tariff provisions.

Substance of proposed rule: Saber Dobbs Ferry, LLC (Saber) is developing a residential complex in United Water New Rochelle, Inc.'s (UWNR) service territory and is requesting water and fire protection service from UWNR. UWNR has determined that providing service to Saber would require significant off-site improvements, in addition to the extension of mains, to resolve predicted pressure issues with Saber's development. Under Commission 16 NYCRR § 501.4 and UWNR's tariff, UWNR would absorb the cost of 75 feet of main per meter to be installed, while Saber would pay the remaining costs and receive prorated refunds if additional customers are added within ten years.

UWNR and Saber propose, instead, for UWNR to be solely responsible for all off-site work, while Saber will, using contractors approved by UWNR, install all on-site infrastructure and forego any potential future refunds. The petitioners state that this arrangement results in a lower cost to UWNR than would result under the Commission's regulations.

The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by UWNR and Saber for a waiver of 16 NYCRR § 501.4 (main extensions) and related provisions of UWNR's tariff and may consider any related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(14-W-0556SP1)

Department of State

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

Issuance of an Order to Remedy a Violation of the Uniform Code

I.D. No. DOS-04-15-00004-EP

Filing No. 26

Filing Date: 2015-01-12

Effective Date: 2015-01-12

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

Proposed Action: Amendment of section 1203.1; and addition of section 1203.5 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 381(1) and 382(2)

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure for the preservation of the public safety and general welfare.

Executive Law § 381(1) directs the Secretary of State to promulgate rules and regulations for the administration of the State Uniform Fire Prevention and Building Code (Uniform Code).

Executive Law § 382(2) provides, in pertinent part, that "any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the [Uniform Code], who shall fail to comply with such order within the time fixed by the regulations promulgated by the Secretary of State pursuant to [Executive Law § 381(1)], such time period stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both."

The regulations adopted by the Department of State pursuant to Executive Law § 381(1) have never "fixed" a time within which a person served with an order to remedy must comply with that order. In most cases, the local government that issues an order to remedy determines a "reasonable time" within which compliance with the order would be required.

This rule will add a new section 1203.5 to 19 NYCRR Part 1203. New section 1203.5 will fix the time within which compliance with an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code at thirty (30) days following the date of the order.

Adoption of this rule on an emergency basis is necessary in light of the recent decision issued by the New York State Supreme Court, Appellate Term, Second Department, 9th and 10th Judicial Districts, in *People v. Plateau Associates, LLC*. The Court held that in the absence of a Department of State regulation fixing the time within which compliance with an order to remedy is required, a party served with such an order could not be charged under Executive Law § 382(2) for failure to comply with such order within the time fixed by regulation for such compliance. The Court rejected the argument that the local government that issued the order to remedy should be permitted to determine the "reasonable time" within which compliance with the order to remedy would be required.

The Plateau Associates Decision may result in local courts deciding not to subject a person who is served with an order to remedy, and who fails to comply within the time specified in such order, to the penalties contemplated by Executive Law § 382(2). This could seriously jeopardize the effectiveness of orders to remedy, and limit the ability of local governments to enforce the Uniform Code.

The Department of State finds that the immediate adoption of a rule is necessary for the preservation of the general welfare and public safety because the absence of a regulation fixing the time within which full compliance with an order to remedy is required may, under the precedent established by the Plateau Associates decision, cause courts to refuse to impose the penalties contemplated by Executive Law § 382(2). This, in turn, would seriously diminish the effectiveness of orders to remedy, resulting in inadequate enforcement of the Uniform Code, thereby potentially subjecting the people of this State to the real and present dangers to public health and safety posed by fire, as identified by the State Legislature in Executive Law § 371(1)(d). Adopting this rule on an emergency basis is necessary to halt such undesirable result at the earliest possible date.

Subject: Issuance of an order to remedy a violation of the Uniform Code.

Purpose: Fix the time for compliance with an order to remedy any condition found to exist in buildings in violation of the Uniform Code.

Public hearing(s) will be held at: 9:00 a.m., March 20, 2015 at Department of State, 99 Washington Ave., Rm. 505, Albany, NY.

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

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

Text of emergency/proposed rule: 1. Section 1203.1 of Part 1203 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

1203.1 Introduction.

Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations for administration of the Uniform Fire

Prevention and Building Code (Uniform Code) and the State Energy Conservation Construction Code (Energy Code). These rules and regulations are to address the nature and quality of enforcement and are the subject of this Part.

2. Part 1203 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new section 1203.5 to read as follows:

1203.5 Compliance with an order to remedy.

(a) Section 381 of the Executive Law provides for the administration and enforcement of the Uniform Code and authorizes the promulgation of this Part to establish minimum standards for such administration and enforcement. In addition, subdivision 2 of section 382 of the Executive Law provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code, who shall fail to comply with such order within the time fixed by the regulations promulgated by the Secretary of State pursuant to subdivision 1 of section 381 of the Executive Law, such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. For the purposes of subdivision 2 of section 382 of the Executive Law, the time within which compliance with an order to remedy is required is hereby fixed at thirty (30) days following the date of the order to remedy.

(b) When a city, village, town, or county, charged under subdivision 2 of section 381 of the Executive Law with administration and enforcement of the Uniform Code, or a state agency accountable under subdivision (d) of section 1201.2 of this Title for administration and enforcement of the Uniform Code, or the Secretary of State acting under Part 1202 of this Title, issues an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code, such order to remedy shall set forth the date of the order, the date by which compliance must be completed, and shall include a statement substantially similar to the following:

“NOTICE: Full compliance with this order to remedy is required by _____ [specify date], which is thirty (30) days after the date of this order. If the person or entity served with this order to remedy fails to comply in full with this order to remedy within the thirty (30) day period, that person or entity will be subject to a fine of not more than \$1,000 per day of violation, or imprisonment not exceeding one year, or both.”

(c) An order to remedy a condition found to exist in, on, or about any building in violation of the Uniform Code shall be served personally or by certified or registered mail within five (5) days of the date of the order.

(d) Nothing in this section shall be construed as prohibiting any city, village, town, county, state agency or the Secretary of State from providing in an order to remedy that the person or entity served with such order must begin to remedy the violation(s) described in the order immediately, or within some other period of time which is specified in the order and which may be less than thirty (30) days; must thereafter continue diligently to remedy such violation(s) until each such violation is fully remedied; and must in any event fully remedy all such violation(s) within thirty (30) days of the date of such order.

(e) Nothing in this section shall be construed as limiting the authority of any city, village, town, county, state agency or the Secretary of State to employ any other means of enforcing the Uniform Code and/or Energy Code, including, but not limited to:

- (1) issuing notices of violation;
- (2) issuing appearance tickets;
- (3) commencing and prosecuting an appropriate action or proceeding pursuant to that part of subdivision 2 of section 382 of the Executive Law that provides that any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the “construction” (as defined in subdivision 4 of section 372 of the Executive Law) of any building who shall knowingly violate any of the applicable provisions of the Uniform Code or any lawful order of a city, village, town, county, state agency or the Secretary of State made thereunder regarding standards for construction, maintenance, or fire protection equipment and systems, shall be subject to a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both;

- (4) commencing and prosecuting an appropriate action or proceeding pursuant to subdivision 3 of section 382 of the Executive Law which seeks, in a case where the construction or use of a building is in violation of any provision of the Uniform Code or any lawful order obtained thereunder, an order from a Justice of the Supreme Court directing the removal of the building or an abatement of the condition in violation of such provisions;

- (5) issuing stop work orders;
- (6) revoking or suspending building permits; revoking or suspending certificates of occupancy; or
- (7) commencing and prosecuting an appropriate action or proceed-

ing to impose such criminal and/or civil sanctions as may be provided in applicable local laws, ordinances, rules or regulations.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 11, 2015.

Text of rule and any required statements and analyses may be obtained from: Mark Blanke, Department of State, Division of Building Standards and Code, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Mark.Blanke@dos.ny.gov

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY AND LEGISLATIVE OBJECTIVES

Executive Law § 381(1) provides that the Secretary of State shall promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Fire Prevention and Building Code (Uniform Code).

Executive Law section 383(2) provides, in part, that “(a)ny person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the [Uniform Code], who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to [Executive Law § 381(1)], such time period to be stated in the order, . . . shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both.”

This rule will add a new section 1203.5 to 19 NYCRR Part 1203. The new section 1203.5 to be added by this rule will effectuate the objectives of Executive Law §§ 381(1) and 382(2) by promulgating a regulation that (1) fixes the time within which compliance with an order to remedy will be required at thirty (30) days following the date of the order and (2) requiring each order to remedy to include a notice that clearly states the time within which compliance with the order is required and the consequences of failure to comply with the order within that stated time.¹

2. NEEDS AND BENEFITS

When current Article 18 of the Executive Law was adopted in 1981, there was no single building code applicable in all parts of the state; local governments were free to adopt their own code, to “accept” the applicability of the State Building Construction Code, or to have no building code at all. When it adopted the current Article 18, the Legislature found and declared that “(w)hether because of the absence of applicable codes, inadequate code provisions or inadequate enforcement of codes, the threat to the public health and safety posed by fire remains a real and present danger for the people of the state” (Executive Law § 371 (1)(d), emphasis added). The Legislature addressed the first two concerns (absence of applicable codes or inadequate code provisions) by providing, in Article 18, that the State Uniform Fire Prevention and Building Code (Uniform Code) would be applicable in all parts of the State except New York City. The Legislature addressed the third concern (inadequate enforcement of codes) by requiring local governments to administer and enforce the Uniform Code (Executive Law § 381(2)) and by providing a non-exclusive list of enforcement tools, including “the power to order in writing the remedying of any condition found to exist in, on or about any building in violation of the [Uniform Code]” (Executive Law § 382(1)).

As stated above, Executive Law § 382(2) provides, in part, that a person served with an order to remedy who fails to comply with such order “within the time fixed by the regulations promulgated by the [Secretary of State] pursuant to [Executive Law § 381(1)], such time period to be stated in the order” shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both.

The regulations adopted by the Department of State (DOS) pursuant to Executive Law § 381(1) currently contain no provision fixing the time for compliance with an order to remedy. DOS understands that a local government issuing an order to remedy will, in most cases, determine a reasonable time within which compliance with the order would be required. However, the recent case of *People v. Plateau Associates, LLC*, the Appellate Term for the Second Department, 9th and 10th Judicial Districts, held that in the absence of a DOS regulation fixing the time within which compliance with an order to remedy is required, the party served with such an order could not be charged under Executive Law § 382(2). The Court rejected the argument that the local government that issued the order to remedy should be permitted to determine the “reasonable time” within which compliance with the order to remedy would be required.

This rule adopts a regulation that fixes the time within which compliance with an order to remedy is required. This rule is necessary because in

the absence of a regulation fixing the time within which full compliance with an order to remedy is required, courts may, under the precedent established by Plateau Associates, refuse to impose the penalties contemplated by Executive Law § 382(2) upon persons who are served with an order to remedy who fail to comply with the order to remedy. This, in turn, would seriously diminish the effectiveness of orders to remedy, resulting in inadequate enforcement of the Uniform Code and potentially subject the people of this State to the real and present dangers of to public safety posed by fire, as identified by the State Legislature in Executive Law § 371(1)(d).

3. COSTS

Costs to Regulated Parties

Pursuant to Executive Law § 382(2), a person served with an order to remedy who fails to comply with the order within the time fixed by this rule will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine not to exceed \$1,000 per day of violation, imprisonment for not more than one year, or both.

A person served with an order to remedy is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. This rule will impose no additional initial capital costs on any person served with an order to remedy. This rule will impose no additional annual compliance costs on any person served with an order to remedy.

Upon learning of the decision in *People v. Plateau Associates, LLC*, the Department of State's Division of Building Standards and Codes solicited information from local governments' code enforcement officials from around the State. These officials were surveyed regarding times within which compliance with an order to remedy is typically required. Among those surveyed, the majority of participants affirmed that they included in orders to remedy, a specific date by which any violations must be corrected. On average, the time allowed before re-inspection or correction of the violations was reported to be twenty (20) days. The time fixed by this rule for compliance with an order to remedy (30 days from the date of the order) is actually slightly longer than this reported average.

This rule will expressly provide (1) that an order to remedy may provide that the person served with the order must begin to remedy the violation(s) immediately and (2) that new section 1203.5 does not limit any other enforcement tool. These provisions will allow a local government to address situations in which immediate action is required to protect health and safety.

Costs to the Department of State, New York State, and Local Governments

In general, local governments are responsible for enforcing the Uniform Code. In certain instances, the Department of State (DOS) is responsible for enforcing the Uniform Code.

This rule will require a local government (or DOS in those instances where it enforces the Uniform Code) to include in each order to remedy a notice substantially similar to the following: "NOTICE: Full compliance with this order to remedy is required by _____ [specify date], which is thirty (30) days after the date of this order. If the person or entity served with this order to remedy fails to comply in full with this order to remedy within the thirty (30) day period, that person or entity will be subject to a fine of not more than \$1,000 per day of violation, or imprisonment not exceeding one year, or both."

This rule will also require the local government or other enforcing agency that issues an order to remedy to serve the order (personally or by registered or certified mail) within 5 days of the date of the order.

The initial costs to be incurred by local governments that enforce the Uniform Code (and by DOS in those instances where it enforces the Uniform Code) will include (1) the cost of modifying their order to remedy forms to include the notice required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, DOS anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and DOS anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for local governments that enforce the Uniform Code (and by DOS in those instances where it enforces the Uniform Code) will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, DOS anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

DOS does not anticipate that the State of New York will incur any costs for the implementation of, and continued administration of, this rule.

4. PAPERWORK

As stated above, this rule will require a local government (or DOS, in instances where it enforces the Uniform Code) to include a notice in each order to remedy specifying the date by which compliance with such order will be required and specifying the consequences of failure to comply with the order within that stated time.

5. LOCAL GOVERNMENT MANDATES

A local government that issues an order to remedy will be required to include in that order a notice specifying the date by which compliance with such order will be required and specifying the consequences of failure to comply with the order within that stated time. A local government that issues an order to remedy will also be required to see that the order is served (personally or by registered or certified mail) with 5 days of the date of the order.

Local governments that enforce the Uniform Code will be required to ensure that their code enforcement personnel receive training on the provisions of this rule.

DOS anticipates that any such additional training and enforcement obligations will have little or no impact on the code enforcement expenses incurred by local governments. In addition, local governments are authorized by existing law to charge fees to offset their code enforcement expenses.

6. DUPLICATION

This rule implements the requirements of Executive Law § 382(2). This rule does not duplicate any rule or other legal requirement of the State or Federal government known to DOS.

7. ALTERNATIVES

DOS considered a rule that would allow local governments to determine the time within which compliance with an order to remedy would be required on a case by case basis. However, the court in the Plateau Associates, LLC case cited above rejected this approach, and indicated that Executive Law § 382(2) requires DOS to adopt a regulation fixing a time within which compliance with an order to remedy would be required.

8. FEDERAL STANDARDS

This rule does not exceed any known minimum standards of the Federal government for the same or similar subject areas.

9. COMPLIANCE SCHEDULE

DOS anticipates that local governments and other code enforcing agencies will be able to comply with this rule immediately.

¹ This rule will also amend section 1203.1 of Title 19 of the NYCRR to include a reference to and definition of the term "Energy Code."

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

Executive Law § 382(2) provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the State Uniform Fire Prevention and Building Code (the Uniform Code), who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to Executive Law § 381(1), such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. This rule amends 19 NYCRR Part 1203 by adding Section 1203.5 (entitled "Compliance with an order to remedy") which fixes the time within which compliance with an order to remedy is required. Under new Section 1203.5, the time within which compliance with an order to remedy is required is fixed at thirty (30) days following the date of the order.

New section 1203.5 will also require (1) that each order to remedy include a notice indicating the date by which compliance with the order is required and the consequences of failure to comply with the order by that date and (2) that each order to remedy be served (personally or by registered or certified mail) within 5 days of the date of the order.¹

The Uniform Code is applicable in all areas of the State except New York City. Therefore, this rule will affect any small business which owns or occupies a building or structure anywhere in the State except New York City and which is served with an order to remedy Uniform Code violation(s) found to exist in, on, or about such building or structure. The Department of State is not able to estimate the number of small businesses that will be served with such an order to remedy.

In general, local governments (cities, towns, and villages) are required to enforce the Uniform Code. In some cases, a county may enforce the Uniform Code. Therefore, this rule will affect any local government or county which enforces the Uniform Code and which chooses to issue an order to remedy. The Department of State estimates that approximately 1,600 local governments and counties enforce the Uniform Code, and that most of these local governments and counties issue orders to remedy from time to time.

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

This rule will fix the time for compliance with an order to remedy at thirty (30) days from the date of the order. A person or entity (including a small business) served with an order to remedy is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. Failure to comply with an order to remedy within the time fixed by this rule will make the person or entity served with the order subject to the penalties prescribed by Executive Law § 382(2). This rule will impose no new reporting, recordkeeping or other compliance requirements on any person served with an order to remedy.

A person or entity (including a small business) served with an order to remedy may find it necessary or desirable to hire an engineer, architect or other professional who constructs or assists in the construction or maintenance of buildings to assist with compliance with the order; however, this rule will not increase the need for any such professional services.

Local government that enforce the Uniform Code and issue orders to remedy will be required to include in each such order a notice indicating the date by which compliance with the order is required and the consequences of failure to comply with the order by that date. Local governments will be required to modify their order to remedy forms to include this notice.

Local government that enforce the Uniform Code and issue orders to remedy will be required to serve each such order to remedy (personally or by registered or certified mail) within 5 days of the date of the order. Local governments will be required to track service of their orders to remedy to assure that they are served within the applicable five day period.

The Department of State anticipates that local governments will be able to comply with the new requirements added by section 1203.5 with their current code enforcement personnel, and will not require any significant additional professional services.

3. COMPLIANCE COSTS.

Pursuant to Executive Law § 382(2), a person served with an order to remedy who fails to comply with the order within the time fixed by this rule will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine not to exceed \$1,000 per day of violation, imprisonment for not more than one year, or both. However, a person or entity (including a small business) served with an order to remedy is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. This rule will impose no additional initial capital costs on any person or entity (including any small business) served with an order to remedy.

This rule will impose no additional annual compliance costs on any person or entity (including any small business) served with an order to remedy.

The initial costs to be incurred by local governments that enforce the Uniform Code will include (1) the cost of modifying their order to remedy forms to include the notice required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, the Department of State anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for local governments that enforce the Uniform Code will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

The Department of State anticipates that local governments will be able to comply with this rule using their existing code enforcement personnel.

5. MINIMIZING ADVERSE IMPACT.

This rule was designed to minimize any adverse impact on all affected parties, including small businesses and local governments, by: (1) fixing the time within which compliance with an order to remedy is required at 30 days from the date of the order, thereby enabling local governments easily to compute the date by which compliance is required and to state that date in the order to remedy, as required by Executive Law § 382(2); (2) specifying the form of the notice to be included in the order to remedy that will enable local governments to state the time within which compliance is required, which will facilitate local governments' ability to comply

with the requirements of Executive Law § 382(2); (3) providing that local governments can include in an order to remedy provisions requiring that the person or entity served with the order must begin to remedy the violation(s) immediately, and must diligently continue to remedy the violation(s), thereby allowing local governments to include appropriate provisions in an order to remedy to address a situation where immediate action is required to address life/safety concerns; and (4) providing a time within which compliance is required (30 days) which is longer than the average time currently specified by local governments that responded to the Department of State's survey (20 days), thereby assuring that a person or entity served with an order to remedy will have a reasonable time to comply before being subject to the penalties prescribed by Executive Law § 382(2).

Approaches such as establishing different compliance or reporting requirements or timetables that take into account the resources available to small businesses and local governments and/or providing exemptions from coverage by the rule, or any part thereof, for small businesses and local governments were not considered because doing so is not authorized by the statute and would endanger the public safety and general welfare.

6. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State gave small businesses and local governments an opportunity to participate in this rule making by posting a notice regarding this rule on the Department of State's website and by publishing a notice regarding this rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry that is prepared by the Department of State and is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

7. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS.

The applicable statute (Executive Law § 382(2)) establishes a violation (viz., failure to comply with an order to remedy) and establishes penalties associated with such violation (viz., a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both). While this rule will relate to the violation and penalty established by Executive Law § 382(2) in the sense that this rule will fix the time within which compliance with an order to remedy is required, this rule will not directly establish or modify a violation and this rule will not directly establish or modify penalties associated with a violation. Therefore, for the purposes of Chapter 524 of the Laws of 2011 and subdivision 1-a of section 202-b of the State Administrative Procedure Act, this rule is not required to include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement. It should be noted, however, that this rule will, in effect, include a cure period or other opportunity for ameliorative action in the sense that this rule will provide that a person served with an order to remedy will have at least 30 days to comply with the order before the statutory penalties can be imposed.

¹ This rule will also amend section 1203.1 of Title 19 of the NYCRR to include a reference to and definition of the term "Energy Code."

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule adds a new section 1203.5 to Title 19 of the NYCRR. New section 1203.5 fixes the time within which compliance with an order to remedy violations of the State Uniform Fire Prevention and Building Code (the Uniform Code) is required.¹

The Uniform Code applies in all parts of the State except New York City. Therefore, this rule will apply in all rural areas of the State.

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

Executive Law § 382(2) provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the State Uniform Fire Prevention and Building Code (the Uniform Code), who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to subdivision one of section three hundred eighty-one of this article, such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. This rule will add a new section 1203.5 to Title 19 of the NYCRR. New section 1203.5 fixes the time for compliance with an order to remedy at thirty (30) days from the date of the order.

A person served with an order to remedy in any part of the State, including any rural area, is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the

order is required. Failure to comply with an order to remedy within the time fixed by this rule will make the person served with the order subject to the penalties prescribed by Executive Law § 382(2).

This rule will impose no new reporting, recordkeeping or other compliance requirements on any person served with an order to remedy.

A person served with an order to remedy may find it necessary or desirable to hire an engineer, architect or other professional who constructs or assists in the construction or maintenance of buildings to assist with compliance with the order; however, this rule will not increase the need for any such professional services.

New section 1203.5 will require a local government that issues an order to remedy to include in the order a notice stating (1) that full compliance with the order within thirty (30) days of the date of the order is required and (2) that in the event the person served with the order to remedy fails to comply in full with the order within the thirty (30) day period, such person will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine of not more than \$1,000 per day of violation, or imprisonment not exceeding one year, or both. Local governments (including local governments in rural areas) will be required to modify their order to remedy forms to include this notice.

New section 1203.5 will provide that an order to remedy must be served within five days of the date of the order. Local governments (including local governments in rural areas) will be required to track service of their orders to remedy to assure that they are served within the applicable five day period.

The Department of State anticipates that local governments will be able to enforce the new requirement added by section 1203.5 with their current code enforcement personnel, and will not require any significant additional professional services.

3. COMPLIANCE COSTS.

Pursuant to Executive Law § 382(2), a person served with an order to remedy who fails to comply with the order within the time fixed by this rule will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine not to exceed \$1,000 per day of violation, imprisonment for not more than one year, or both. However, a person served with an order to remedy in any part of the State, including any rural area, is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. This rule will impose no additional initial capital costs on any person served with an order to remedy. This rule will impose no additional annual compliance costs on any person served with an order to remedy.

The initial costs to be incurred by local governments (including local governments in rural areas) will include (1) the cost of modifying their order to remedy forms to include the notice required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, the Department of State anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for local governments (including local governments in rural areas) will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

4. MINIMIZING ADVERSE IMPACT.

This rule was designed to minimize any adverse impact on all areas of the State, including rural areas, by: (1) fixing the time within which compliance with an order to remedy is required at 30 days from the date of the order, thereby enabling local governments easily to compute the date by which compliance is required and to state that date in the order to remedy, as required by Executive Law § 382(2); (2) specifying the form of the notice to be included in the order to remedy that will enable local governments to state the time within which compliance is required, which will facilitate local governments' ability to comply with the requirements of Executive Law § 382(2); (3) providing that local governments can include in an order to remedy provisions requiring that the person or entity served with the order must begin to remedy the violation(s) immediately, and must diligently continue to remedy the violation(s), thereby allowing local governments to include appropriate provisions in an order to remedy to address a situation where immediate action is required to address life/safety concerns; and (4) providing a time within which compliance is required (30 days) which is longer than the average time currently specified by local governments that responded to the Department of State's

survey (20 days), thereby assuring that a person or entity served with an order to remedy will have a reasonable time to comply before being subject to the penalties prescribed by Executive Law § 382(2).

Establishing different compliance requirements for public and private sector interests in rural areas and/or providing exemptions from coverage by the rule for public and private sector interests in rural areas was not considered because doing so is not authorized by the statute and would endanger the public safety and general welfare.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of this rule by means of notices posted on the Department's website and published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code/Energy Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

¹ This rule will also amend section 1203.1 of Title 19 of the NYCRR to include a reference to and definition of the term "Energy Code."

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities in New York.

Executive Law § 382(2) provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the State Uniform Fire Prevention and Building Code (the Uniform Code), who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to Executive Law § 381(1), such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. This rule will add a new section 1203.5 to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York. New section 1203.5 fixes the time for compliance with an order to remedy at thirty (30) days from the date of the order.

A person served with an order to remedy is required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. Failure to comply with an order to remedy within the time fixed by this rule will make the person served with the order subject to the penalties prescribed by Executive Law § 382(2).

Therefore, the Department of State concludes that it is apparent from the nature and purpose of this rule that it will have no substantial adverse impact on jobs and employment opportunities.

Department of Transportation

NOTICE OF ADOPTION

Regulation of Commercial Motor Carriers in New York State

I.D. No. TRN-35-14-00001-A

Filing No. 42

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Amendment of Parts 154, 720, 721, 820, 845 and 855 of Title 17 NYCRR.

Statutory authority: Transportation Law, sections 14(12), (18), 14-f(1)(a), 138(2) and 140(2); and Vehicle and Traffic Law, arts. 19-A and 19-B

Subject: Regulation of commercial motor carriers in New York State.

Purpose: The rules incorporate Title 49 CFR provisions pursuant to regulation of commercial motor carriers operating in New York State.

Text of final rule: 17 NYCRR section 154-1.1(f) is amended to read as follows:

(f) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title

49, Parts 100 to 177, *Parts 178 to 199, Parts 200 to 299 and Parts 300 to 399*, revised as of October 1, 2013 [1990], published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of State, *One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001*, [162 Washington Avenue, Albany, NY 12231,] at the Libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or *Central Permit Office, 50 Wolf Road*, [Traffic and Safety Division, State Office Campus, Building 5,] Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many [may] public libraries and bar association libraries.

17 NYCRR section 154-2.1(e) is amended to read as follows:

(e) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated in this Subpart have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, *Parts 178 to 199, Parts 200 to 299 and Parts 300 to 399*, revised as of October 1, 2013 [1990], published by the Office of the Federal Register, National Archives and Records Administration as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of State, *One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001*, [162 Washington Avenue, Albany, NY 12231,] at the Libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or *Central Permit Office, 50 Wolf Road*, [Traffic and Safety Division, State Office Campus, Building 5,] Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many [may] public libraries and bar association libraries.

17 NYCRR section 720.12(a) is amended to read as follows:

17 NYCRR 720.12 Incorporation by reference.

(a) [Incorporation by certain Federal regulation by reference.] The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the book [let]s entitled: Code of Federal Regulations, Title 49, Parts 100 to 177 [185], [parts 200 to 399 (NYS DOS File No. 943, File Date June 23, 1997, Tracking No. CFR-95-10) and parts 400 to 999 (NYS DOS File No. 1701, File Date September 1, 1998, Tracking No. CFR-97-5) revised as of October 1, 1997,] *Parts 178 to 199, Parts 200 to 299, Parts 300 to 399, Parts 400 to 571 and Parts 572 to 999*, revised as of October 1, 2013 [1997], published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, *One Commerce Plaza, 99 Washington Avenue*, [41 State Street,] Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, *50 Wolf Road*, [State Office Campus,] Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

17 NYCRR section 721.6 is repealed.

A new section 17 NYCRR 721.6 is added to read as follows:

17 NYCRR 721.6. Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in this part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, Parts 178 to 199, Parts 200 to 299, Parts 300 to 399, Parts 400 to 571 and Parts 572 to 999, revised as of October 1, 2013, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

17 NYCRR section 820.14 is amended to read as follows:

17 NYCRR section 820.14. Incorporation by reference.

The provisions of the Code of Federal Regulations which have been

incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, Parts 178 to 199, Parts 200 to 299, Parts 300 to 399, revised as of October 1, 2013 [2003], published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, *One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001*, [41 State Street, Albany, NY 12231] at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, *50 Wolf Road, Albany, NY 12232*. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

17 NYCRR Part 845 is repealed.

A new 17 NYCRR Part 845 is added to read as follows:

Section 845.0. Applicability.

(a) *The rules and regulations in this part are applicable to equipment operated by or for, but not owned by authorized carriers of property and of household goods in intrastate, interstate and foreign commerce subject to the provisions of Articles 6, 8 and 9 of the Transportation Law.*

(b) *Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the book entitled: Code of Federal Regulations, Title 49, Parts 300 to 399, revised as of October 1, 2013, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.*

The title of 17 NYCRR Part 855 is amended to read as follows: INSURANCE REQUIREMENTS FOR MOTOR CARRIERS OF PROPERTY [AND BROKERS]

17 NYCRR section 855.2 is amended to read as follows:

Section 855.2. Minimum levels of financial responsibility for interstate motor carriers of property. [Brokers.]

Incorporation by reference. The Commissioner of Transportation adopts Part 387 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length for for-hire motor carriers of property operating motor vehicle in interstate and foreign commerce and motor carriers transporting hazardous materials, hazardous substances, or hazardous wastes in interstate, intrastate, or foreign commerce. The provisions of the Code of Federal Regulations which have been incorporated in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 185, Parts 186 to 199, Parts 200 to 299 and Parts 300-399, revised as of October 1, 2013, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the Libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Central Permit Office, 50 Wolf Road, Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries. [Every broker shall secure and maintain and file with this commissioner a corporate bond or policy of insurance in a company authorized to do business in this State by the Superintendent of Insurance, conditioned to insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements or arrangements therefore. The bond or policy shall have a minimum liability of \$10,000.]

Final rule as compared with last published rule: Nonsubstantive changes were made in section 855.2.

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, New York State Department of Transportation, 50 Wolf Road, 6th Floor, Albany, NY 12232, (518) 457-2411, email: david.winans@dot.ny.gov

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published JIS. In the Notice of Proposed Rulemaking published in the State Register on 9/3/2014, new material listing the parts and volumes of the CFR to be incorporated by reference in 17 NYCRR 855.2 was complete and correct, but not underlined. That typographical error has been corrected in this Notice of Adoption.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Consolidated Local Street and Highway Improvement Program (CHIPS)**

I.D. No. TRN-40-14-00005-A

Filing No. 43

Filing Date: 2015-01-13

Effective Date: 2015-01-28

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

Action taken: Amendment of sections 34.1 and 34.2 of Title 17 NYCRR.

Statutory authority: Highway Law, section 10-c; L. 2011, ch. 60, part A

Subject: Consolidated Local Street and Highway Improvement Program (CHIPS).

Purpose: To correct minor inaccuracies and to reduce certification requirements for municipalities in regard to CHIPS grant allocations.

Text or summary was published in the October 8, 2014 issue of the Register, I.D. No. TRN-40-14-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Diane Kenneally, New York State Department of Transportation (NYSDOT), 50 Wolf Road, Albany, NY 12232, (518) 457-4059, email: diane.kenneally@dot.ny.gov

Assessment of Public Comment

The agency received no public comment.